

N 2746  
No. 13310

United States  
Court of Appeals  
for the Ninth Circuit.

See vols. 2747-8

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

GEORGE W. REED and INTERNATIONAL  
HOD CARRIERS, BUILDING & COMMON  
LABORERS UNION, LOCAL No. 36, AFL,

Respondents.

—  
**Transcript of Record**  
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**Petition for Enforcement of Order of the  
National Labor Relations Board**

FILED

OCT 1 1952

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

PAUL P. O'BRIEN  
CLERK



No. 13310

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United States  
Court of Appeals  
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National Labor Relations Board



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## APPEARANCES

A. NORMAN SOMERS,

Assistant General Counsel, National Labor Relations Board, Washington, D. C.,

For Petitioners, National Labor Relations Board.

THOMAS E. STANTON, JR., ESQ.,

San Francisco, Calif.,

Counsel for Respondent, George W. Reed.

WATSON A. GARONI, ESQ.,

200 Guerrero St.,

San Francisco, Calif.,

Counsel for Respondent International Hod Carriers Building & Common Laborers Union of America, Local No. 30, AFL.

GORDON W. MALLATRATT, ESQ.,

625 Market St.,

San Francisco, Calif.,

Counsel for Respondent, E. C. Charlton.



United States of America  
Before the National Labor Relations Board  
Twentieth Region

Case No. 20-CA-268

In the Matter of

GEORGE W. REED

and

ERNEST SYDNEY CHARLTON, an Individual.

Case No. 20-CB-80

In the Matter of

INTERNATIONAL HOD CARRIERS, BUILD-  
ING & COMMON LABORERS UNION OF  
AMERICA, LOCAL No. 36, AFL,

and

ERNEST SYDNEY CHARLTON, an Individual.

**COMPLAINT**

It having been charged by Ernest Sydney Charlton, an individual, that George W. Reed, an individual, herein called Respondent Reed, and International Hod Carriers, Building & Common Laborers Union of America, Local No. 36, AFL, herein called Respondent Union, have engaged in, and are engaging in, unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C.A. 141 et seq. (Supp. July, 1947), herein called the Act, the General Counsel for the National Labor Relations

Board, on behalf of the Board, by the Regional Director for the Twentieth Region, designated by the Rules and Regulations of the National Labor Relations Board, Series 5, as Amended, Section 203.15, hereby issues his Complaint upon the charges, duly consolidated, pursuant to the provisions of Section 203.33(b) of the above Rules and Regulations, and alleges as follows:

### I.

The Respondent Reed is, and at all times herein mentioned, has been an individual, doing business as a licensed masonry contractor, with his business office in San Francisco, California.

### II.

In the course and conduct of his business, Respondent Reed performs, and at all times material herein has performed, work as a masonry contractor on construction projects in the State of California to which substantial amounts of materials are sold, shipped, delivered, and transported in interstate commerce from points outside the State of California.

### III.

International Hod Carriers, Building & Common Laborers Union of America, Local No. 36, AFL, is a labor organization within the meaning of Section 2, subsection (5) of the Act.

### IV.

Sometime in May, 1949, Ernest Sydney Charlton was employed to work as a hod carrier for Respond-

ent Reed on an apartment housing project known as Stonestown in San Francisco, California, on which project Respondent Reed was a subcontractor responsible for masonry work, and Charlton continued in said employment until on or about June 14, 1949.

V.

On or about June 14, 1949, Respondent Reed, by his agents, officers and employees, discharged the aforesaid Charlton upon the request and demand of Respondent Union because said Respondent Reed had been advised that said Charlton was not in good standing as a member of said Respondent Union in that said Charlton had failed to obtain clearance from Respondent Union before reporting to work.

VI.

Respondent Reed, by the acts set forth in paragraph V above, did discriminate and is now discriminating in regard to hire and tenure of employment and terms and conditions of employment of Ernest Sydney Charlton, and did encourage and is encouraging membership in, or adherence to a labor organization, and did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

VIII.

By the acts set forth in paragraph V above, the Respondent Reed did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights

guaranteed them in Section 7 of the Act, and did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8 (a) (1) (A) of the Act.

#### VIII.

On or about June 14, 1949, Respondent Union, by its officers, agents and employees, did cause Respondent Reed to discharge Ernest Sydney Charlton because of his alleged failure to maintain membership in good standing in Respondent Union in that said Charlton had failed to obtain clearance from the Respondent Union before reporting to work.

#### IX.

By the acts set forth in paragraph VIII above, the Respondent Union did cause Respondent Reed to discriminate against an employee in violation of Section 8 (a) (3) and did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

#### X.

By the acts set forth in paragraph IX above, the Respondent Union did interfere with, restrain and coerce, and is interfering with, restraining and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, and did thereby engage in, and is engaging in, unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

XI.

The acts of the Respondent Reed and Respondent Union set forth in paragraphs V and VIII above, occurring in connection with the operations of the employer as set forth in paragraphs I and II above, have a close, intimate and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

XII.

The acts of Respondent Reed as set forth in paragraph V above, constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and 8 (a) (3), and Section 2 (6) and 2 (7) of the Act.

The acts of Respondent Union as set forth in paragraph VIII above, constitute unfair labor practices affecting commerce within the meaning of Section 8 (b) (1) (A) and 8 (b) (2), and Section 2 (6) and 2 (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twentieth Region, on this 12th day of May, 1950, issues his Complaint against George W. Reed and International Hod Carriers, Building & Common Laborers Union of America, Local No. 36, AFL, respondents herein.

[Seal] /s/ GERALD A. BROWN,  
Regional Director, National Labor Relations Board.

[Received in evidence July 5, 1950, as General Counsel's Exhibit No. 1-C.]

United States of America  
Before the National Labor Relations Board  
Twentieth Region

[Title of Causes.]

ANSWER OF RESPONDENT INTERNATIONAL  
HODCARRIERS, BUILDING &  
COMMON LABORERS UNION OF AMER-  
ICA, LOCAL No. 36, AFL

Comes now the Respondent Union, International Hodcarriers, Building & Common Laborers Union of America, Local No. 36, AFL, and severing from his Co-Respondents, answers the complaint on file herein as follows:

I.

Respondent Union denies the allegations of Paragraphs V, VI, VII, VIII, IX, X, XI, and XII of said consolidated complaint.

II.

The Respondent Union having no information or belief upon the allegations mentioned in Paragraph II of said consolidated complaint sufficient to enable him to answer the allegation therein, places his denial on that ground denies each and every allegation set forth in said Paragraph II.



Wherefore, Respondent Union prays that said consolidated complaint be dismissed.

Dated June 28, 1950.

/s/ WATSON A. GARONI,  
Attorney for Respondent  
Union.

Duly verified.

Received June 28, 1950.

[Received in evidence July 5, 1950, as General Counsel's Exhibit No. 1-J.]

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[Title of Causes.]

ANSWER OF RESPONDENT  
GEORGE W. REED

Respondent George W. Reed hereby answers the complaint on file herein as follows:

I.

Respondent admits the allegations contained in paragraph I of said complaint.

II.

Answering the allegations contained in paragraph II of said complaint, Respondent admits that in the course and conduct of his business, he performs, and at all times material herein has performed, work as a masonry contractor on construction projects in the State of California to which materials are sold, shipped, delivered, and transported in interstate commerce from points outside the State of Califor-

nia. He is without knowledge as to the amounts of material so sold, shipped, delivered, and transported to said projects and does not know whether said amounts are to be deemed "substantial" with relation to the total amounts of materials sold, shipped, delivered and transported to said projects. In this connection, he avers that during the calendar year 1949 his gross business amounted to approximately \$480,000, of which amount approximately \$80,000 represents purchases of building materials and supplies. Less than 3% of this amount of \$80,000 represented materials and supplies originating from points outside of the State of California.

### III.

Respondent admits the allegations contained in paragraphs III and IV of said complaint.

### IV.

Answering the allegations contained in paragraph V of said complaint, Respondent avers that on June 14, 1949, his foreman laid off Ernest Sydney Charlton upon the request and demand of the business agent of Respondent Union. He denies that such lay off was for the reason that he had been advised that said Charlton was not in good standing as a member of said Respondent Union, and in this connection, he alleges that said layoff was for the sole reason that said business agent threatened at said time and place, that unless said Charlton left the project, said business agent would cause all other hod carriers working on said project to leave the project immediately.

V.

Respondent Reed denies each and very one of the allegations contained in paragraphs VI and VII of said complaint.

VI.

In answer to the allegations contained in paragraphs VIII, IX and X of said complaint, Respondent avers that he is without knowledge as to the reason why the business agent of Respondent Union demanded that his foreman remove Ernest Sydney Charlton from said project under penalty of the removal of all other hod carriers from the project if said Charlton were not removed. He denies that Respondent Union caused him to discriminate against an employee in violation of Section 8 (a) (3) of the Act.

VII.

In answer to the allegations contained in paragraph XI of said complaint, Respondent denies that the act of laying off said Charlton, as hereinabove averred, had a close, intimate and substantial relation to trade, traffic, and commerce among the several states or that said act had a tendency to lead to labor disputes burdening and obstructing commerce and the free flow of commerce. In this connection, Respondent alleges that said act had only a very remote and insubstantial effect on commerce, if any, and that it would not effectuate the policy of the Act for the National Labor Relations Board to assert jurisdiction in the instant proceeding.

## VIII.

Respondent denies each and every one of the allegations contained in paragraph XII of said complaint.

Wherefore, Respondent prays that said complaint be dismissed.

Dated June 30, 1950.

GARDINER JOHNSON,

THOMAS E. STANTON, JR.,

By /s/ THOMAS E. STANTON, JR.,

Attorneys for Respondent,

George W. Reed.

Duly verified.

Received July 3, 1950.

[Received in evidence July 5, 1950, as General Counsel's Exhibit No. 1-K.]

United States of America  
Before the National Labor Relations Board  
Division of Trial Examiners  
Washington, D. C.

[Title of Causes.]

BENJAMIN B. LAW, ESQ.,

For the General Counsel.

THOMAS E. STANTON, JR., ESQ.,

Of San Francisco, Calif.,

For the Respondent Reed.

WATSON A. GARONI, ESQ.,

Of San Francisco, Calif.,

For Respondent Union.

GORDON W. MALLATRATT, ESQ.,

Of San Francisco, Calif.,

For Ernest Sydney Charlton, an Individual.

Before: Ward, Trial Examiner.

INTERMEDIATE REPORT

Statement of the Case

Upon separate charges duly filed on July 6, 1949, by Ernest Sydney Charlton, herein called Charlton or the Claimant, the General Counsel<sup>1</sup> by

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<sup>1</sup>The General Counsel and his representative at the hearing are herein called General Counsel; the National Labor Relations Board is herein called the Board.

the Regional Director for the Twentieth Region (San Francisco, California), issued a complaint dated May 12, 1950,<sup>2</sup> against George W. Reed, herein called Respondent Reed or Reed, and against International Hod Carriers, Building & Common Laborers Union of America, Local No. 36, AFL, herein called Respondent Union, the Union, or Local No. 36, alleging that Respondent Reed had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act; and that the Respondent Union had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (b) (1) (A) and 8 (b) (2), and Section 2 (6) and (7) of the Act.

On July 7, 1949, the Regional Director caused a copy of the original charge to be served on both Respondents; and on May 12, 1950, caused the order consolidating cases, notice of consolidated hearing, complaint, and charges to be served on both Respondents and the charging party, Charlton.

With respect to the unfair labor practices, the complaint alleged in substance that: (1) During May, 1949, Respondent Reed employed Charlton to work for him as a hod carrier on an apartment housing project known as Stonestown, on which

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<sup>2</sup>On this same day, the said Regional Director, pursuant to Section 203.33 of the Board's Rules and Regulations, issued an order consolidating the above-numbered cases for hearing.

project Respondent Reed was a subcontractor responsible for certain masonry work; (2) on or about June 14, 1949, Respondent Union, by its officers, agents, and employees demanded that Respondent Reed discharge said Charlton because he was not in good standing as a member of Respondent Union in that said Charlton had failed to obtain clearance from Respondent Union before reporting to work for Reed; (3) on or about June 14, 1949, Respondent Reed, by his agents, officers, and employees, discharged the aforesaid Charlton pursuant to the request and demand of Respondent Union for the reason that Respondent Reed had been advised that said Charlton was not in good standing as a member of Respondent Union in that he failed to obtain clearance from Respondent Union before reporting to work for Reed; and (4) that by the acts described above Respondent Reed and Respondent Union, and each of said Respondents restrained and coerced Charlton in the exercise of the rights guaranteed in Section 7 of the Act.

On June 28, 1950, Respondent Union filed its answer to the complaint wherein it denied any knowledge that Reed was engaged in interstate commerce; and generally denied all allegations of the complaint.

On July 3, 1950, Respondent Reed filed his answer to the complaint in which he admitted that in the course and conduct of his business at all times material herein he performed work as a masonry contractor in construction of projects in the State of California to which material was sold, shipped,

delivered, and transported in interstate commerce from points outside the State of California.

He alleged, however, that he was without knowledge as to the "amounts" so sold, shipped, delivered, and transported to such projects, and does know whether said amounts "are to be deemed 'substantial'" with relation to the total amounts of materials sold, shipped, delivered, and transported to said projects;<sup>3</sup> and that, in any event, it would not effectuate the policies of the Act for the Board to assert jurisdiction herein.

Pursuant to due notice, a hearing was held at San Francisco, California, on July 5, 6, and 7, 1950, before the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel, both Respondents, and Claimant Charlton were represented by counsel. All<sup>4</sup> participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. At the close of the hearing the parties were afforded an opportunity to and did argue orally, upon the record, before the undersigned. The parties were further advised that they might file briefs and/or proposed findings of fact and conclusions of law with the undersigned. Briefs were filed by the General Counsel and by counsel for both Re-

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<sup>3</sup>Reed's version of the reason for Charlton's termination as an employee, as set forth in his answer, is quoted below.

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<sup>4</sup>Counsel for Charlton did not participate in the examination of witnesses, but at all times counseled with the General Counsel.



spondents and have been duly considered by the undersigned.

After the taking of evidence, the undersigned granted the General Counsel's motion to conform the pleadings to the proof in formal matters, and reserved ruling on Respondents' motion to dismiss the complaint and to strike General Counsel's Exhibit No. 3.<sup>5</sup> The motion to dismiss the complaint is disposed of in accordance with the findings of fact, conclusions of law and recommendations made below.

Upon the entire record in the case and from his observation of witnesses, the undersigned makes the following:

#### Findings of Fact

##### 1. Commerce; the business of Respondent Reed

Respondent Reed is, and, for at least 9 years past, has been engaged in business as a masonry contractor in the San Francisco Bay Area of northern California. During the 9-year period above referred to Reed has been a member of Masons and Builders Association of California, Inc., an association composed of some 40 employers engaged in masonry, contracting, and related construction activities in northern California.

The association has, during several years past, had collective bargaining contracts with Respondent Union, covering hod carriers employed by mem-

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<sup>5</sup>The undersigned makes no finding based upon this exhibit, but retains it in the records merely as background material.

bers of such association including Respondent Reed. The said contracts have been on a multiple basis through the association.<sup>6</sup> Reed testified and the record discloses that, with minor exceptions, all of his contracts for masonry work are subcontracts made with general contractors. At the time of the hearing herein Reed employed 15 bricklayers and 10 hod carriers, which members were, according to Reed's testimony, below his general average. The materials ordinarily used by Reed consist mostly of brick, mortar (lime and cement), some tile, terra cotta, glazed tile units, small tools, mortar mixers, and wheelbarrows.

At the time of the termination of Charlton on June 14, 1949, by Reed, the latter was engaged in completing a subcontract valued at \$110,239, for building boiler room chimneys, garages, flower boxes, and trimmings at the Stonestown project,<sup>7</sup> work on which contract had been started in 1948, when some 70 per cent of the work required to be done by Reed had been completed. Since Reed's performance of his subcontract on the Stonestown project began in 1948, the undersigned deems it advisable to consider in some detail Reed's activities in 1948 as well as in 1949.

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<sup>6</sup>The above findings are based upon a stipulation of the parties. The stipulation as first agreed to, recited that contracts included the period of June 14, 1949 (the date of Charlton's termination), but was later modified by striking the words "including the period of June 14, 1949," from such stipulation.

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<sup>7</sup>This project is described and referred to in greater detail below.

### Reed's 1948 Activities

Reed did not recall the gross value of his operations for 1948 in terms of dollars. He did, however, refer to certain building projects upon which he had subcontracts for masonry work, as follows:

The Pacific Telephone and Telegraph Company,<sup>8</sup> San Francisco, California, for masonry work on a telephone exchange building performed by Reed at the agreed price of \$148,000. The construction work done under Reed's contract took approximately 6 months.

The Pacific Gas and Electric Company,<sup>9</sup> San Francisco, California, masonry work performed on a substation, an operation lasting about 3 months. Contract price \$60,000.<sup>10</sup>

David Bohannon Company, Inc., owner and general contractor of a project consisting of some 300 to 400 small 1-family dwellings at San Lorenzo, California. Under 2 or 3 "small contractors" Reed erected "three or four hundred" fireplaces and chimneys of "the aggregate value of" around twenty-five or thirty thousand dollars.

Reed testified that he had many jobs around

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<sup>8</sup>Heretofore found by the Board to be engaged in commerce within the meaning of the Act. 74 NLRB 536.

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<sup>9</sup>Heretofore found by the Board to be engaged in commerce under the Act. 87 NLRB 257.

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<sup>10</sup>Reed testified the amount may have been as high as \$63,000, "some place in there."

\$1,000 up to \$5,000 during 1948, but did not recall them, as "taking (sic) back two years it's hard to put your finger on them."

### Reed's 1949 Activities

Reed's masonry subcontracts for 1949 for both commercial and residential projects grossed \$481-869.25.

One of the major projects was The Pacific Telephone and Telegraph Company, for whom Reed had a subcontract for masonry work on a telephone exchange in 1948, let a further construction contract in 1949. Reed's subcontract for the 1949 job covered masonry and related work on a new 9- to 10-story building, used in part as an office building and in part as a telephone exchange. The value of Reed's 1949 contract was \$150,000.<sup>11</sup>

Standard Oil Company of California<sup>12</sup> about mid-year 1948 began the construction of a 22-story office building adjacent to the "present home office building at 225 Bush Street," in San Francisco, California; the approximate cost of the entire addition or building is \$6,000,000; and was approximately 90 per cent complete in July, 1950. The new building is basically a steel structure with concrete walls, floors, and with a terra cotta indented fairway on

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<sup>11</sup>The parties stipulated that The Pacific Telephone and Telegraph Company and The Pacific Gas and Electric Company are public utilities with their main offices in San Francisco, California.

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<sup>12</sup>Heretofore found to be engaged in commerce within the meaning of the Act. 79 NLRB 1066.

the outside. Slightly under \$900,000 worth of steel went into the structure; none of which steel was fabricated in the State of California, but was fabricated in "the east," that is to say, "east of the Mississippi."<sup>13</sup>

Reed's contract with The Standard Oil Company of California covered masonry and related work and provided for the payment to Reed of approximately \$200,000.<sup>14</sup>

At the time Reed terminated Charlton on June 14, 1949, the former was completing a subcontract valued at \$110,239, which covered the building brick boiler room chimneys, garages, flower boxes, and trimming at the Stonestown project.<sup>15</sup>

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<sup>13</sup>The record discloses without dispute that six Otis elevators installed in this new addition were manufactured in New York and New Jersey. The price or value of such elevators was not disclosed on the record.

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<sup>14</sup>The findings with reference to The Standard Oil Company of California's additional office building (other than Reed's subcontract thereon), is based on the credited testimony of E. P. Wright, manager of the building design construction department for said Standard Oil Company.

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<sup>15</sup>Stonestown project is an apartment and commercial development being erected by Stonestown Development Corporation, as developer and general contractor. When completed, the project will have 683 apartments of 1, 2, and 3 bedrooms and a commercial area. The apartments were over 90 per cent completed in July, 1950. Construction of the commercial area was just beginning in July, 1950. While W. Boyd Stewart, secretary of Stonestown

The record discloses that J. H. Pomery and Co., sold approximately \$300,000 worth of lumber to Stoneson; that the lumber was shipped to San Francisco from northern California and southern Oregon; that some of the timber cut in California was processed in Oregon mills; and that 60 per cent of the total lumber so sold and delivered by Pomero Company came from Oregon, and the balance, or 40 per cent, came from northern California. Thus \$180,000 worth of the lumber was shipped in interstate commerce.<sup>16</sup>

The record further discloses that L. J. Kruse Company of Oakland, California, contracted with Stoneson to furnish heating and plumbing equipment consisting of sanitary facilities, boilers, heaters, and labor of installation of such equipment for the sum of approximately \$780,000. Edward H.

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Development Corporation, testified that it was estimated that Stonestown project, when completed, would cost \$10,000,000, he conceded upon cross-examination that contracts on the project completed to date of the hearing amounted to but \$3,688,000. The undersigned does not find that this latter figure denotes the value of improvements actually made on Stonestown project, but is of the opinion that it represents the approximate value of contracts for certain improvements made or to be made on the project.

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<sup>16</sup>Donald Whittemore, office manager for Pomero Company, testified that practically all of the lumber contracted for had been delivered, but could not say that it had all been so delivered by June 14, 1950.

Krusse, trustee for said Kruse Company, testified in substance that:

Total contract price was approximately \$780,000: <sup>17</sup>	
Labor costs 20 to 35 per cent of total 35 per cent of \$780,000 .....	\$273,000
	<hr/>
Bal.—Cost of material .....	\$507,000
50 per cent of material delivered by June 14, 1949 .....	\$253,500
60 to 70 per cent of material came from without the State. 60 per cent thereof amounts to .....	\$126,750

From the foregoing compilation it appears and the undersigned finds that as of June 14, 1949, the Kruse Company sold and delivered to Stonestown project in interstate commerce goods valued at \$126,750.<sup>18</sup>

Alfred F. Levi, salesman with W. P. Fuller and Company, testified in substance: That his company sold and installed all glass in Stonestown apartments; that approximately \$48,000 worth of glass was purchased and shipped to California from without the State of California; that approximately \$2,000 worth of glass was purchased within the State of California; that he personally supervised the installation of all the glass in Stonestown apart-

<sup>17</sup>The exact figures are \$779,341.47. The figure \$780,000 is used as a round number in this instance.

<sup>18</sup>The findings made in this section are based on the credited testimony of Edward H. Kruse, trustee.

ments; and that of the \$48,000 worth of glass so installed 50 per cent or \$24,000 worth was in the company warehouse at the time the contract to furnish and install it was made.

From the foregoing it appears that \$48,000 worth of glass was actually transported in interstate commerce; and that approximately \$24,000 worth of glass was sold, shipped, and transported in interstate commerce in 1949.<sup>19</sup>

From the foregoing findings it appears that in 1948 Reed performed services for the Pacific Telephone and Telegraph Company in the amount of \$148,000. Since the sum so paid to Reed was for work done on a telephone exchange, such services were necessary to the operations of said Telephone and Telegraph Company. As found above, the Board has heretofore asserted jurisdiction over this company. Also, as found above, Reed in 1948, performed services for the Pacific Gas and Electric Company in an amount in excess of \$60,000 for certain work on a substation necessary to such Gas and Electric Company in its operations. Since such services aforesaid are and were valued at \$50,000 per annum or more, the Board will exercise juris-

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<sup>19</sup>W. Boyd Stewart, secretary for Stonestown Development Corporation and other Stonestown corporations, testifying as a witness herein, on July 5, 1950, stated that the apartment buildings were practically 99 per cent completed, from which the undersigned infers that at least 50 per cent of the glass panes were installed in 1949, inasmuch as it is a normal practice to install glass as one of the final operations in enclosing such structures.



diction over enterprises, such as Reed's shown herein, by virtue of the fact such services so furnished are necessary to the operations of other employers engaged in commerce.<sup>20</sup> In 1949, as above found, Reed performed, under the terms of a subcontract, \$150,000 in construction services for The Pacific Telephone and Telegraph Company of a 9- to 10-story building to be used as an office building and telephone exchange necessary in the operations of said company's business, both intrastate and interstate. What has been said above with reference to the 1948 contract covering Reed's sale of services to said Telephone and Telegraph Company is equally applicable to the 1949 transactions.<sup>21</sup>

It has been found that Reed had a subcontract covering certain masonry work performed in 1949 on the \$6,000,000 addition to the Standard Oil Company of California's home office building, in the amount of \$200,000.

In a recent Board decision in re Standard Oil Company of California and Oil Workers Union, CIO,<sup>22</sup> the Board, with reference to commerce, found:

During 1948, the Respondent produced in the State of California over 70 million barrels of refined petroleum products of which more than

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<sup>20</sup>See *Hollow Tree Lumber Company*, 91 NLRB No. 113; *Rock Asphalt, Inc.*, and *General Contracting Employers' Association*, 91 NLRB No. 228.

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<sup>21</sup>See footnote next above.

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<sup>22</sup>91 NLRB No. 87.

75 per cent was shipped to points located outside the State of California. During 1949 substantial amounts of Respondent's product was shipped from its California refineries to points located outside the State of California.

It would appear from the record that the new or additional office building constructed in 1948 and 1949 for Standard Oil Company of California was and is necessary to Standard Oil Company's operation, and it is so found. Inasmuch as Reed's services under his subcontract were valued at \$50,000 or more, the Board, under its recently promulgated decisional standards having to do with its exercise and assertion of jurisdiction or declining so to do, depending as to whether the policies of the Act would be effectuated by the exercise of jurisdiction in any given case, should assert and exercise jurisdiction on the basis of the facts found above in connection with Standard Oil Company of California.<sup>23</sup>

The record indicates that while Stoneson Development Corporation's project, when completed, will cost about \$10,000,000, that at the time of the hearing but some \$3,688,000 had been expended on the project.

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<sup>23</sup>Hollow Tree Lumber Company, *supra*.

Part of the material received in interstate commerce by Stoneson to date of hearing was approximately as follows:

Seller	Material	Total Cost	Amount in Commerce
Pomeroy & Co. ....	Lumber	\$300,000	\$180,000
I. J. Kruse Co. ....	Heating, plumbing	780,000	126,000
Fuller & Co. ....	Window glass	50,000	48,000 <sup>24</sup>
Total.....			\$354,000

From the foregoing it appears that Stoneson Development Corporation is engaged in commerce within the meaning of the Act; and inasmuch as Reed's services under his subcontract valued at \$110,239 or more than \$50,000 was and is necessary to Stonestown project's operations, such facts standing alone, would warrant the Board's assertion of jurisdiction herein. It is so found.

On the basis of the foregoing and upon the entire record, the undersigned concludes and finds that Respondent Reed's operations have and tend to have a direct and substantial effect upon interstate commerce as defined by the Act; and that the policies of the Act will be effectuated by the Board's asserting and exercising jurisdiction herein.

## II. The Labor Organization Involved

International Hod Carriers, Building & Common Laborers Union of America, Local No. 36, AFL, is a labor organization within the meaning of Section 2(5) of the Act.

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<sup>24</sup>Other items of lesser amounts could have been included in this compilation.

## III. The Unfair Labor Practices

A. The discriminatory discharge of Ernest Sydney Charlton; interference, restraint and coercion.

1. The sequence of events; the facts

Claimant Charlton joined Local No. 36 in August 1906. He has been a member of said Local continuously since that date, with the exception of one occasion when he was injured in about 1915. He did not work for almost 12 months and was reinstated in his membership in 1916, "at half the amount" of union dues during the time he was unable to work.

On and prior to May, 1949, Charlton was employed by Harry E. Drake, a masonry contractor in San Francisco, California. On or about May 11, 1949,<sup>25</sup> Charlton was laid off. Drake testified that Charlton worked until May 11, 1949, when according to the latter he applied to Reed's superintendent, one John Dikerman,<sup>26</sup> for a job and "he signed me up." Charlton was employed at the Stonestown project and worked until June 14, 1949.

At about 11 a.m. Joseph A. Murphy appeared at the job site and talked to some of Reed's bricklayers. Ray Green, a bricklayer then employed by

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<sup>25</sup>The record does not fix the exact date that Charlton was laid off by Drake and the date he was employed by Reed. The parties stipulated that he was employed by Reed and the latter's foreman, Patrick McDonough, estimated the time as 4 or 5 weeks.

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<sup>26</sup>Dikerman was not called as a witness.

Reed, informed Charlton that “Murphy’s going to have you put off the job, and if Pat [Patrick McDonough, Reed’s foreman] won’t fire you he’s going to pull the men off the job, the other hod carriers, and tie the job up.”

Foreman McDonough testified that when he came upon the scene he found one, Sweeney a hod carrier, walking away with his duffel bag and asked, “What’s the matter?” Sweeney replied, “Well, . . . Joe [Murphy] blew the job.” In connection with his talk with Murphy, McDonough testified:

Q. Who is Joe?

A. Joe Murphy. So I says to Joe, “What’s going on here?” “Well,” he says, “they can’t work with this man on the job.” So, I says, “Well, let it go until noontime, Joe, and I’ll take care of him.” No, he had to be laid off right then. (Emphasis added.)

Q. Excuse the interruption, did he say who was this man?

A. Well, he just said this man. I don’t think he mentioned the name or anything like that. He just said they can’t work with that man Mr. Charlton.

Murphy in part testified:

Q. Did you talk to the employer and ask him to lay Charlton off?

A. I told the foreman the hod carriers weren’t going to work with this individual until he did get a clearance.<sup>27</sup>

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<sup>27</sup>The Union contended that Charlton should not have gone to work for Reed without a prior “clear-

Murphy held no conversation with Charlton, but handed him a "citation" to report on June 17, 1949, before Local No. 36's executive committee. According to Charlton he went to the union hall and found no hod carriers in session.<sup>28</sup>

In connection with Charlton's termination Reed's answer alleged, as follows:

Answering the allegation contained in paragraph V of the complaint, Respondent avers that on June 14, 1949, his foreman laid off Ernest Sydney Charlton upon the request and demand of the business agent of Respondent Union. He denies that such layoff was for the reason that he had been advised that said Charlton was not in good standing as a member of Respondent Union,<sup>29</sup> and in this connec-

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ance" from Local No. 36. There is no contention or evidence that the Union had a union-shop contract or any contract covering Reed's employees on June 14, 1949.

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<sup>28</sup>There is testimony of a second citation being served on Charlton by the Union and testimony that he did not attend any session of the executive committee. Since Local No. 36 had no contract with Reed covering the latter's employees, Charlton's affairs with Local No. 36 can have no bearing on the issues herein. It is so found.

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<sup>29</sup>Reed's foreman, McDonough, testified that Business Agent Murphy had told the former that Charlton could not work for Reed "on account of the man not being clear. He said the man would have to have clearance."

tion, he alleges that the said layoff was for the sole reason that said business threatened at said time and place, that unless said Charlton left the project, said business agent would cause all other hod carriers working on said project to leave the project immediately.

Reed further justified his layoff of Charlton, as follows:

\* \* \* In this case there was a weak link and it had to be straightened out and in this present case the man was told he could come back to work as soon as he had straightened the weak link out; [complied with the Union's rules] straightened himself out.<sup>30</sup> Otherwise my job would have been tied up and the performance of my contract would have been imperilled.

On the basis of the foregoing and the record it would appear that Charlton's discharge, and means by which it was occasioned, were each in violation of the Act, unless the contention of the Respondent parties referred to below have merit.

## 2. Issues; contentions; conclusions

Respondent Reed contends in substance and effect that:

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<sup>30</sup>It should be noted that Reed had or made no complaint that Charlton was not a competent workman. The above testimony indicates a disposition on Reed's part to concede to Local No. 36 such rights as would be recognized under the Act only after the proviso to Section 8 (a) (3) of the Act had been complied with by the way of an election.

(1) The Board should decline to assert jurisdiction herein, as such assertion would not effectuate the policies of the Act; (2) Charlton's layoff not a violation of Section 8 (a) (1) and (3) of the Act, since it did not restrain or coerce Charlton from exercising his rights to refrain from engaging in concerted activities for purposes of collective bargaining, nor did such layoff encourage or discourage Charlton to become or remain a member of Respondent Union; and (3) assuming that the Board assert jurisdiction herein and assuming further that it determines that Respondent Reed has violated provisions of the Act, the entry of a back-pay order would not effectuate the policies of the Act.

As to contention (1), the undersigned has found above in Section I that the Board not only has jurisdiction herein, but also finds that the policies of the Act will be effectuated by the Board's asserting and exercising such jurisdiction. Respondent Reed's contention (1) is without merit. It is so found.

As to contention (2), wherein Respondent Reed contends in effect that since Charlton has been a lifetime member of Local No. 36 and has not been expelled from or resigned from the Union that his layoff by Reed has not restrained or coerced him from (a) exercising his "right to refrain from engaging in concerted activities for the purposes of collective bargaining or other mutual aid or protection, (b) nor did it encourage or discourage the Charging Party [Charlton] to become or remain a member of Respondent Union."



In this connection Respondent Reed's brief states as follows:

The Charging Party has been a member of the Respondent Union continuously since 1906, with the exception of a brief period in 1915 and 1916 when he was incapacitated by an injury. He has not been expelled from the Union, nor has he voluntarily resigned his membership. Respondent Union demanded that he be laid off solely because of his failure to comply with a Union rule requiring that members report any change in their employment to the Union.

In view of the Charging Party's long-continued membership in the Union and his claim to Union membership up to the very date of the hearing, the charge that his layoff by Respondent Employer "restrained" or "coerced" him from refraining from Union membership or activity within the meaning of section 7 of the Act is wholly unreliable. It is not reasonable to conclude that a man who has supported a union for more than forty years would suddenly desire to withdraw from the union because of the threat of disciplinary action for violation of a rule requiring that a change in employers be reported to the Union. We submit that Respondent Employer's action in laying off the Charging Party until he straightened out his difficulty with the Union Business Agent could not possibly have "coerced" or "encouraged" the Charging Party to remain a member of

Respondent Union for the simple reason that the Charging Party had no desire or intention to relinquish his Union membership. For the same reason, such action cannot be said to have “encouraged” the Charging Party to become or remain a member of the Union. (Emphasis in original.)

The foregoing quoted portion of Respondent’s brief is anomalous to say the least. However, it is significant for the admissions contained therein, namely:

We submit that Respondent Employer’s action in laying off the Charging Party until he straightened out his difficulty with the Union Business Agent could not possibly have “coerced” or “encouraged” the Charging Party to remain a member of Respondent Union \* \* \*

As to (2) (a), the record discloses that Charlton after his layoff by Reed sent his union dues to Respondent Union and that such dues were returned by the latter, thus on the surface and on the record, Charlton desires to retain his union membership but further desires to refrain or absent himself from attending trials by the Union executive committee. Under the Act Charlton has the right to refrain from such activities in part or in whole as he may see fit. The Union’s constitution and/or bylaws may and probably does permit Local No. 36 to expel a member who refuses to submit to a trial or hearing before such executive committee upon service of a “citation,” such as is referred to elsewhere in the record.

The fact that Charlton has not seen fit to voluntarily resign from the Union does not imply that his discharge by Reed was not discriminatory.<sup>31</sup> The facts are that Charlton under Section 7 of the Act was at liberty to refrain from any concerted activity with his fellow union members or others regardless of the nature of the activity whether to join in the attendance of a social meeting or submit to a trial or hearing before the Union's executive board; and in the absence of a union-shop agreement between the Union and Reed, the latter was without legal authority to discharge or lay off Charlton "until he straightened out his difficulty with the Union Business Agent." Charlton's termination by Reed under the circumstances was in violation of Section 8 (a) (1) and (3) of the Act since it sought to force Charlton to engage in certain concerted activities from which he desired to refrain. It is so found.

As to (2) (b), it is clear from the foregoing and the record that Reed's discharge of Charlton on June 14, 1949, would by reason of fact that Charlton had for upwards of 40 years been a union mem-

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<sup>31</sup>It may well be that without membership in Local No. 36 it would be impossible for Charlton to follow his trade in the San Francisco Bay Area at all. From the record it may be inferred that all masonry contractors and subcontractors make wage agreements with interested unions. Reed, in fact testified: "\* \* \* We also make and have a three months' negotiated wage agreement which gives us our scale of wages to be paid to the different trades."

ber worker in the Building Trades where closed-shop conditions have generally existed, have impelled Charlton to retain membership in Local No. 36 or run the chance of being deprived of a continuing opportunity to earn his livelihood at his trade. Moreover, it is clear that by Reed's admitted action through his foreman, Patrick McDonough, on June 14, 1949, in laying off Charlton until he complied with the demands of Business Agent Murphy of Local No. 36, Reed thereby granted to and served notice on all masonry employees that he had granted to Local No. 36 the benefit of a closed-shop contract, notwithstanding neither Reed nor Local No. 36 had complied with the proviso of Section 8 (a) (1) and (3) of the Act. Contention (2) is without merit. It is so found.

As to contention (3), wherein Reed contends that in the event the Board asserts jurisdiction and determines that Reed has violated provisions of the Act, that it would not effectuate the policies of the Act to enter a back-pay order against Reed. In his argument in support of this contention, Reed's counsel argues that Charlton's difficulty with his Union was "over an essentially trivial matter, that he endangered the employment of the entire crew of 10 men." If the foreman had not yielded to the demands of the Union's business agent, a work stoppage would have resulted which would have tied up the job indefinitely.

Whether Charlton's difficulty with his Union was over a trivial matter or not, it was of no concern to Reed since the latter had no union or closed-shop

contract requiring him to discharge his employees on demand of the Union; and while the Union might have caused the crew of 10 men to leave the job with a loss to Respondent Reed, such fact would not justify or excuse Reed for violating the Act.<sup>32</sup> Contention (3) is without merit. It is so found.

The Respondent Union in substance and effect contends that:

Reed's operations and purchases of materials being mostly intrastate and his interstate purchases of materials being but a small percentage of his total, that his operations pose questions, as follows:

(a) Fail to affect commerce within the meaning of the Act so that the "Board would lack jurisdiction to hear an alleged unfair labor practice case \* \* \*"; or

(b) If some remote effect on commerce could be found in said contractor's business essentially local in its nature and character, so that it would not effectuate the policies of the Act to assert jurisdiction in the alleged unfair labor practice case.

On the whole, Respondent Union's brief, which incidentally discloses considerable amount of research, contends and argues to the effect that the Board does not have jurisdiction herein; that if it

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<sup>32</sup>The Board and the courts have long and consistently held that economic exigency does not excuse violations of the Act. *Star Publishing Co.*, 97 F. 2d 465-467 (C.A. 9); *Guy F. Atkinson Co., et al.*, 90 NLRB No. 27.

should determine otherwise it should refuse to assert jurisdiction since Respondent Reed's interstate business affects commerce with the "de minimus doctrine"; and that if it is found that some remote effect upon commerce by Respondent Reed is found, despite that, his business is essentially local in its nature and character and it would not effectuate the policies of the Act to assert jurisdiction.

For the reasons set forth in connection with the consideration of Respondent Reed's contention, the undersigned is of the opinion that the Board has and should assert jurisdiction herein, which findings therefore answer Respondent Union's posed questions (a) and (b) in finding that Reed's operations have a continuous and important effect upon the flow of commerce in both the building industry as such and in other industries serving and engaged in commerce. It is so found.

From the foregoing and upon the entire record it appears and the undersigned finds that Respondent Reed discriminated in regard to the hire and tenure of employment of Ernest Sydney Charlton by his discharge on June 14, 1949, caused in part at least by Respondent Union's insistence and threats to the effect that all hod carriers would be removed from the job if Charlton was not removed instantly; and by Respondent Reed's acquiescing in demands for Charlton's termination, and by granting, in effect, closed-shop rights to Respondent Union, thereby encouraging membership in the Union, and enabling Respondent Union to enforce

obedience by its members to such rules as Respondent Union had or may prescribe, all contrary to the Act, Respondent Reed has engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.

By the making of; enforcing of such demands; and by causing Respondent Reed to so discriminate against Charlton, Respondent Union has engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) and 8 (b) (2) of the Act.

#### IV. The effect of the unfair labor practices upon commerce

The activities of Respondents set forth in Section III, above, occurring in connection with the operations of Respondent Reed described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. The remedy

Having found that the Respondents have engaged in certain unfair labor practices, it will be recommended that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It will be recommended that Respondent Reed offer Ernest Sydney Charlton immediate and full

reinstatement to this former or substantially equivalent position<sup>33</sup> without prejudice to his seniority or other rights and privileges, jointly and severally with Respondent Union, make him whole for any loss of pay he may have suffered by reason of the Respondent's discrimination against him by payment to him of a sum of money equal to that which he would normally have earned as wages from the date of his discharge to the date of Respondent Reed's offer of reinstatement, less his net earnings<sup>34</sup> during such period. The loss of pay will be computed on a quarterly calendar basis, in accordance with the formula adopted by the Board in *F. W. Woolworth Company*, 90 NLRB No. 41. Earnings in one particular quarter will have no effect upon the back-pay liability for any other quarter. The

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<sup>33</sup>In accordance with the Board's consistent interpretation of the term, the expression "former or substantially equivalent position" is intended to mean "former position wherever possible and if such position is no longer in existence then to a substantially equivalent position." See *The Chase National Bank of The City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827.

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<sup>34</sup>By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere, which would not have been incurred but for this unlawful discrimination and the consequent necessity of his seeking employment elsewhere. *Crossett Lumber Company*, 8 NLRB 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered earnings. *Republic Steel Corporation v. NLRB*, 311 U.S. 7.



undersigned also recommends that Respondent Reed make available to the Board, upon request, pay roll and other records to facilitate back-pay computations. F. W. Woolworth Company, *supra*.

### Conclusions of Law

1. International Hod Carriers, Building & Common Laborers Union of America, Local No. 36, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By acquiescing in the demands for; by, in effect, granting closed-shop rights to Respondent Union contrary to the proviso of Section 8 (a) (3) of the Act, all to the end that the Union could enforce obedience by its members to such rules as the Union had or might prescribe; and to encourage membership in the Union Respondent Reed thereby engaged in unfair labor practices within the meaning of Section 8 (a) (1) and 8 (a) (3) of the Act.

3. By the making of; enforcing of such demands and causing Respondent Reed to so discriminate, Respondent Union has engaged in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

4. By discriminating in regard to the hire and tenure of employment of Ernest Sydney Charlton, thereby encouraging membership in the Union, and enabling the Union to enforce obedience by its members to such rules as the Union has or may prescribe, Respondent Reed has engaged in unfair labor practices within the meaning of Section 8 (a) (3) and (1) of the Act.

5. By causing Respondent Reed to discriminate against said Ernest Sydney Charlton, as aforesaid, Respondent, Union has engaged in unfair labor practices within the meaning of Sections 8 (b) (2) and 8 (b) (1) (A) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

### Recommendations

Upon the basis of the above findings of fact and conclusions of law and upon the entire record in the cases, the undersigned recommends that:

1. The Respondent Reed, his officers, agents, successors, and assigns shall:

a. Cease and desist from:

(1) Encouraging membership in International Hod Carriers, Building & Common Laborers Union of America, Local No. 36, AFL, or in any other labor organization of his employees, by acquiescing in the demand for and granting closed-shop rights, contrary to the Act, to aid the Union in the enforcement of its rules and regulations among its membership; from discharging and refusing to reinstate employees pursuant to such demand as aforesaid, unless and until the Respondent Union be authorized as provided in Section 8 (a) (3) of the Act.

(2) In any other manner, discriminating against or otherwise interfering with, restraining, or coercing his employees in the exercise of the rights guaranteed in Section 7 of the Act, including the

right to refrain from membership in and obedience to the rules of Local No. 36 or any other labor organization.

b. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(1) Offer to Ernest Sydney Charlton immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges and jointly and severally with Respondent Union made him whole in the manner set forth in Section V, above, entitled "The remedy."

(2) Upon request, make available to the Board of its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amount of back pay due under the terms of this Recommended Order.

(3) Post in conspicuous places at his main office in San Francisco, California, and at the Stonestown project, and at all other places where notices to employees are customarily posted, copies of the notice attached hereto and marked "Appendix A." Copies of this notice to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by Respondent Reed or his respective representative, be posted by him immediately upon receipt thereof and be maintained by him for at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by Respondent Reed to insure that said notices are not altered, defaced, or covered with other material.

(4) Notify the Regional Director for the Twentieth Region, in writing, within twenty (20) days from the date of receipt of this Intermediate Report what steps he has taken to comply herewith.

2. The Respondent Union, International Hod Carriers, Building & Common Laborers Union of America, Local No. 36, AFL, its officers, agents, successors, and assigns, shall:

a. Cease and desist from:

(1) Encouraging membership in International Hod Carriers, Building & Common Laborers Union of America, Local No. 36, AFL, or in any other labor organization of Respondent Reed's employees, by demanding and causing Respondent Reed to grant to Respondent Union "closed-shop" rights, contrary to the Act, in order to aid Respondent Union in the enforcement of its rules and regulations among its membership;<sup>35</sup> and causing Respondent Reed to discharge and thereafter refuse to reinstate employees as an aid to the Union's enforcement of its rules and regulations against its membership, unless and until a union-shop agreement has been duly authorized as provided in Section 8 (a) (3) of the Act.

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<sup>35</sup>The undersigned does not question the Union's right to prescribe its own rules with respect to the acquisition and retention of membership in the Union by such members, but does find and hold that it may not enforce such rules by demanding and forcing employers to discriminate against employees in the absence of compliance with the proviso of Section 8 (a) (3) of the Act.

(2) Causing or attempting to cause Respondent Reed and his agents, successors, or assigns to discriminate against their employees or prospective employees because they are not members in good standing in Local No. 36, except in accordance with the provisions of Section 8 (a) (3) of the Act.

(3) In any other manner restraining or coercing employees of Respondent Reed in the exercise of the right to refrain from any or all of the concerted activities within the meaning of Section 7 of the Act.

(4) Causing or attempting to cause any other employer engaged in commerce within the meaning of the Act to discriminate against Charlton, except in accordance with Section 8 (a) (3) of the Act.

(5) In any other manner restraining or coercing Charlton, as an employee or prospective employee of any other employer engaged in commerce within the meaning of the Act, in the exercise of his right to refrain from any or all concerted activities within the meaning of Section 7 of the Act.

b. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(1) Jointly and severally with Respondent Reed, make Ernest Sydney Charlton whole for any loss of pay suffered by reason of the discrimination against him, and in the manner set forth in Section V, above, entitled "The remedy."

(2) Post immediately in conspicuous places at its business office, and at all other places where notices to its members are customarily posted,

copies of the notice attached hereto marked "Appendix B." Copies of this notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by official representative of Local No. 36, be posted by it immediately upon receipt thereof and be maintained for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by Local No. 36 to insure that said notices are not altered, defaced, or covered by any other material.

(3) Notify George W. Reed, in writing, and furnish a copy to Ernest Sydney Charlton, that Respondent Union has no objection to Charlton's employment by Reed.

(4) Notify the Regional Director for the Twentieth Region, in writing, within twenty (20) days from the date of receipt of this Intermediate Report what steps it has taken to comply herewith.

It is further recommended that unless on or about twenty (20) days from the date of the receipt of this Intermediate Report, Respondent Reed and the Respondent Union notify the aforesaid Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring them or any of them, as the case may be, to take the action aforesaid.

Dated at Washington, D. C., this 29th day of January, 1951.

/s/ PETER F. WARD,  
Trial Examiner.

Appendix A

Notice to all Employees

Pursuant to

the Recommendations of a Trial Examiner

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not enter into, be party to, or otherwise participate in the enforcement of any agreement or arrangement, written or oral, with International Hod Carriers, Building & Common Laborers Union of America, Local No. 36, AFL, which requires that we grant to Local No. 36 the right to demand dismissal of any of our employees who are not in good standing with Local No. 36, in that they have failed or refused to obey some rule of Local No. 36 except to the extent authorized by the Act, and when such requirements have been met by said Local.

We Will Not discharge employees or refuse to hire employees because they are not members of Local No. 36 in good standing or otherwise discriminate against or interfere with, restrain, or coerce our employees or prospective employees in the exercise of the right to refrain from engaging in concerted activities as guaranteed in Section 7 of the Act.

We Will make whole Ernest Sydney Charlton for any loss of pay resulting from his discriminatory discharge.

All our employees are free to become or remain or free to refrain from becoming or remaining members in good standing of Local No. 36 or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act.

GEORGE W. REED

(Employer)

Dated ..... By .....  
 (Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

### Appendix B

Notice to All Members of  
 International Hod Carriers, Building & Common  
 Laborers Union of America, Local No. 36.

Pursuant to  
 the Recommendations of a Trial Examiner  
 of the National Labor Relations Board, and in  
 order to effectuate the policies of the National  
 Labor Relations Act, we hereby notify you that:

We Will Not demand or enforce demands for closed or union-shop rights over employees of George W. Reed for the purpose of enforcing obedience to union rules by its members or cause or attempt to cause Reed to discriminate against an employee for such purpose unless and until we are duly authorized to do so in



accordance with Section 8 (a) (3) of the Act. We Will Not in any other manner cause or attempt to cause George W. Reed to discriminate against employees or prospective employees in violation of Section 8 (a) (3) of the Act, and we will not in any other manner restrain or coerce employees or prospective employees in the exercise of rights guaranteed by Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

We Will notify George W. Reed in writing, and furnish copies to Ernest Sydney Charlton, that we have no objection to his employment by George W. Reed.

We Will make whole Ernest Sydney Charlton for any loss of pay he may have suffered by reason of the discrimination against him.

**INTERNATIONAL HOD CARRIERS, BUILDING & COMMON LABORERS UNION OF AMERICA, LOCAL No. 36.**

(Labor Organization)

Dated .....

By .....

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[As amended by order dated February 6, 1951 and corrected by Peter A. Ward, Trial Examiner.]

United States of America Before the  
National Labor Relations Board

[Title of Causes.]

RESPONDENT UNION'S EXCEPTIONS  
TO INTERMEDIATE REPORT

The Respondent Union, International Hodcarriers, Building & Common Laborers Union of America, Local No. 36, AFL, hereby excepts to the Intermediate Report of the Trial Examiner, dated January 29, 1951, in the above entitled proceeding in the following particulars:

Reference to Intermediate Report

Page 7, Lines 45-50—1. To that part of the Trial Examiners findings based upon the evidence in the entire record, as well as the evidence stated in the Intermediate Report on Page 7, lines 9 to 18 and lines 25 to 44, to the effect that the employer, Respondent Reed's operations have and tend to have a direct and substantial effect upon interstate commerce as defined by the Act; and that the policies of the Act will be effectuated by the Board's asserting and exercising jurisdiction herein.

Page 15, Lines 50-54—2. To that part of the Trial Examiners recommendation that in its practical effect prohibits the Union from having any Union security contract of any nature with the

employer, as for example, a Union shop, except in accordance with the provisions of Section 8(a) (3) of the Act.

Dated: This 1st day of March, 1951, at San Francisco, California.

Respectfully submitted,

/s/ WATSON A. GARONI,  
Attorney for Respondent  
Union.

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United States of America Before the  
National Labor Relations Board

[Title of Causes.]

STATEMENT OF EXCEPTIONS OF RE-  
SPONDENT GEORGE W. REED

Respondent George W. Reed submits the following statement setting forth his exceptions to the intermediate report of the Trial Examiner herein and to rulings upon motions and objections and the other proceedings hereafter specified:

1. Respondent excepts, generally and specifically, to said intermediate report insofar as it finds and concludes that the National Labor Relations Board should assert and exercise jurisdiction over Respondent's operations.

[Argumentative material deleted therefrom.]

\* \* \*

2. Respondent excepts, generally and specifically, to the finding of the Trial Examiner that Respond-

ent's operations have and tend to have a direct and substantial effect upon interstate commerce as defined in the National Labor Relations Act.

\* \* \*

3. Respondent excepts, generally and specifically, to the finding of the Trial Examiner that it would effectuate the policies of the Act for the Board to assert and exercise jurisdiction in this case.

\* \* \*

4. Respondent excepts, generally and specifically, to the finding of the Trial Examiner that Respondent has engaged in unfair labor practices within the meaning of section 8 (a) (1) (3) of the Act.

\* \* \*

5. Without limitation of the foregoing exceptions, Respondent excepts to the following findings of fact of the Trial Examiner for the reasons stated:

(a) Page 10, line 19; page 11, line 51; page 12, line 18—The findings that Respondent's contentions are without merit.

\* \* \*

(b) Page 11, lines 47 to 49—The finding that in laying off the complainant Respondent "thereby granted to and served notice on all masonry employees that he had granted to Local No. 36 the benefit of a closed-shop contract."

\* \* \*

(c) Page 12, lines 50 to 52—The finding that Respondent's operations have a continuous and im-

portant effect upon the flow of commerce in both the building industry as such and in other industries serving and engaged in commerce.

\* \* \*

(d) Page 13, lines 20 to 24—The finding that Respondents' activities have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

\* \* \*

6. Respondent excepts to the recommendation of the Trial Examiner that Respondent offer to complainant immediate and full reinstatement to his former or substantially equivalent position.

\* \* \*

7. Respondent excepts to the recommendation of the Trial Examiner that Respondent be ordered, jointly and severally with Respondent Union, to pay complainant a sum of money equal to that which he would normally have earned as wages from the date of his layoff by Respondent to the date of an offer of reinstatement, less his net earnings during such period.

\* \* \*

8. Respondent excepts, generally and specifically, to Conclusions of Law Nos. 2 through 6 upon the grounds that none of them is supported by the evidence, and that they are contrary to law.

9. Respondent excepts, generally and specifically,

to each and every one of the recommendations of the Trial Examiner upon the ground that Respondent has not violated any provision of the Act, and that the affirmative action referred to in such recommendations is not required to effectuate the policies or purposes of the Act.

10. Respondent excepts, generally and specifically, to each ruling of the Trial Examiner adverse to Respondent on objections to the introduction of evidence, motions to strike and other objections and motions made on behalf of Respondent during the course of the hearing before the Trial Examiner.

11. Without limitation of the foregoing exceptions, Respondent excepts to the ruling denying the motion of Respondent to dismiss the complaint.

\* \* \*

Dated: March 8, 1951.

GARDINER JOHNSON,  
THOMAS E. STANTON, JR.

By /s/ THOMAS E. STANTON, JR.,  
Attorneys for Respondent  
George W. Reed.

Received March 16, 1951.

United States of America Before the  
National Labor Relations Board

DECISION AND ORDER

On January 29, 1951, Trial Examiner Peter F. Ward issued his Intermediate Report in the above-entitled proceedings, finding that Respondent Reed, herein referred to as the Employer, and Respondent Local No. 36, herein referred to as the Union, had engaged in and were engaging in certain unfair labor practices, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the Employer and the Union filed exceptions to the Intermediate Report and supporting briefs.

The Board<sup>1</sup> has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the Trial Examiner's findings, recommendations, and conclusions, to the extent that they are consistent with our conclusions and order, hereinafter set forth.

---

<sup>1</sup>Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel.

1. We agree with the Trial Examiner that the Employer's operations are subject to the Board's jurisdiction. In so doing, however, we rely entirely upon the jurisdictional facts, fully set forth in the Intermediate Report, showing that the Employer, in 1948 and 1949, furnished services valued at more than \$50,000 per annum necessary to the operation of (1) a public utility, (2) an instrumentality of commerce, and (3) an enterprise engaged in producing or handling goods, destined for out-of-State shipment, valued at more than \$25,000 per annum.

Upon the basis of these facts we find, in accordance with the recently adopted jurisdictional policy of the Board,<sup>2</sup> that the Employer is engaged in commerce within the meaning of the Act and also that it will effectuate the policies of the Act to assert jurisdiction here.<sup>3</sup>

2. With respect to the termination of Charlton's employment, it is clear from the record that Charlton was discharged by the Employer at the insistence of the Union because he did not have "clearance" from the Union. There was no union-security agreement in existence which might have afforded the Employer and the Union a valid basis for the discharge. We find, therefore, that the Employer,

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<sup>2</sup>Hollow Tree Lumber Company, 91 NLRB No. 113.

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<sup>3</sup>See Edward Besch & Sons, 92 NLRB No. 84; William W. Kimmins & Sons, 92 NLRB No. 25; and White Construction and Engineering Company, Inc., 92 NLRB No. 17.



by discharging Charlton, has engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act;<sup>4</sup> and we find further that the Union, by causing the Employer to discharge Charlton, has engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) and Section 8 (b) (2) of the Act.<sup>5</sup>

### The Remedy

We have found that the Employer discriminated against Charlton in violation of Section 8 (a) (1) and (3) of the Act, and that the Union caused the Employer to discriminate against Charlton in violation of Section 8 (b) (1) (A) and Section 8 (b) (2) of the Act. Therefore, as the Trial Examiner recommended, we shall order the Employer to offer Charlton immediate reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges.

---

<sup>4</sup>The Employer contends that, as Charlton still retained his membership in the Union, his discharge did not encourage or discourage membership in the Union, and that, therefore, there could be no violation of Section 8 (a) (3) of the Act. We reject this argument for reasons fully set forth in *American Pipe and Steel Corporation*, 93 NLRB No. 11. Although dissenting in that case, Member Murdock deems himself bound by the majority decision therein.

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<sup>5</sup>*American Pipe and Steel Corporation*, *supra*; *Peerless Quarries, Inc.*, 92 NLRB No. 184; and *Clara-Val Packing Company*, 87 NLRB 703. See also *Sterling Furniture Company, et al.*, 94 NLRB No. 20.

As we have found that both Respondents are responsible for the discrimination suffered by Charlton, we shall order them jointly and severally to make Charlton whole for the loss of pay that he may have suffered by reason of the discrimination against him. It would, however, be inequitable to the Union to permit the amount of its liability for back pay to increase despite the possibility of its willingness to cease its past discrimination, in the event that the Employer should fail promptly to offer reinstatement to Charlton. We shall therefore provide that the Union may terminate its liability for further accrual of back pay to Charlton by notifying the Employer, in writing, that the Union has no objection to his reinstatement. The Union shall not thereafter be liable for any back pay accruing after 5 days from the giving of such notice. Absent such notification, the Union shall remain jointly and severally liable with the Employer for all back pay to Charlton that may accrue until the Employer complies with our order to offer him reinstatement.

In all other respects we adopt the recommendations made by the Trial Examiner in the section of the Intermediate Report entitled "The remedy."

#### ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that:

1. The Respondent George W. Reed,<sup>6</sup> his agents, successors and assigns, shall:

a. Cease and desist from:

(1) Encouraging membership in International Hod Carriers, Building & Common Laborers Union, Local No. 36, AFL,<sup>7</sup> or in any other labor organization of his employees, by discharging and refusing to reinstate any of his employees for failing to obtain clearance from the Union or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment, except to the extent permitted by an agreement executed in accordance with Section 8 (a) (3) of the Act.

(2) In any other manner interfering with, restraining, or coercing his employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement executed in accordance with Section 8 (a) (3) of the Act.

b. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Offer to Ernest Sydney Charlton immediate and full reinstatement to his former or a substantially equivalent position without prejudice to his seniority or other rights and privileges, and jointly and severally with the Union make him whole in the manner set forth in the section entitled The

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<sup>6</sup>Hereinafter referred to as the Employer.

---

<sup>7</sup>Hereinafter referred to as the Union.

Remedy, for any loss of pay suffered by reason of the discrimination against him.

(2) Upon request, make available to the National Labor Relations Board, or its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary for a determination of the amount of back pay due and the right of reinstatement under the terms of this Order.

(3) Post in conspicuous places at his main office in San Francisco, California, and at the Stonestown project, and at all other places where notices to employees are customarily posted, copies of the notice attached hereto and marked Appendix A.<sup>8</sup> Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the Employer or his representative, be posted by him immediately upon receipt thereof and be maintained by him for at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Employer to insure that such notices are not altered, defaced, or covered by any other material.

(4) Notify the Regional Director for the Twentieth Region, in writing, within ten (10) days from the date of this Order, what steps he has taken to comply herewith.

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<sup>8</sup>In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words "A Decision and Order," the words "A Decree of the United States Court of Appeals Enforcing."

2. The Respondent International Hod Carriers, Building & Common Laborers Union, Local No. 36, AFL, its officers, representatives, agents, successors, and assigns, shall:

a. Cease and desist from:

(1) Causing or attempting to cause the Employer, his agents, successors, and assigns, to discharge or otherwise discriminate against any of its employees because they failed to obtain clearance from the Union, except to the extent permitted by an agreement executed in accordance with Section 8 (a) (3) of the Act.

(2) In any other manner causing or attempting to cause the Employer, his agents, successors, and assigns, to discriminate against his employees in violation of Section 8 (a) (3) of the Act.

(3) Restraining or coercing employees of the Employer, his successors or assigns, in the exercise of the rights guaranteed in Section 7 of the Act.

(4) Causing or attempting to cause any other employer engaged in commerce within the meaning of the Act to discriminate against Ernest Sydney Charlton for failing to obtain clearance from the Union, except to the extent permitted by an agreement executed in accordance with Section 8 (a) (3) of the Act.

(5) In any other manner restraining or coercing Ernest Sydney Charlton, as an employee or prospective employee of any other employer engaged in commerce within the meaning of the Act, in the exercise of his right to refrain from any or all concerted activities within the meaning of Section 7 of

the Act, except to the extent that such right may be affected by an agreement executed in accordance with Section 8 (a) (3) of the Act.

b. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) Jointly and severally with the Employer make Ernest Sydney Charlton whole, in the manner set forth in the section entitled *The Remedy*, for any loss of pay he may have suffered by reason of the discrimination against him.

(2) Post immediately in conspicuous places at its business office, and at all other places where notices to its members are customarily posted, copies of the notice attached hereto and marked Appendix B.<sup>9</sup> Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by an official representative of the Union, be posted by it immediately upon receipt thereof and be maintained for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Union to insure that such notices are not altered, defaced, or covered by any other material.

(3) Notify the Employer, in writing, and furnish a copy to Ernest Sydney Charlton, that the Union has no objection to Charlton's employment by the Employer.

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<sup>9</sup>In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words "A Decision and Order," the words "A Decree of the United States Court of Appeals Enforcing."

(4) Notify the Regional Director for the Twentieth Region, in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

Signed at Washington, D. C., May 18, 1951.

PAUL M. HERZOG,

Chairman,

JAMES J. REYNOLDS, JR.,

Member,

ABE MURDOCK,

Member,

[Seal]

NATIONAL LABOR RELATIONS BOARD.

### Appendix A

#### Notice to All Employees Pursuant to a Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will Not encourage membership in International Hod Carriers, Building & Common Laborers Union of America, Local No. 36, AFL, or in any other labor organization of our employees, by discharging and refusing to reinstate any of our employees for failing to obtain clearance from Local No. 36, or by discriminating against our employees in any other manner in regard to their hire or

tenure of employment or any term or condition of their employment, except to the extent permitted by an agreement executed in accordance with Section 8 (a) (3) of the Act.

We Will Not in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act, except to the extent that such rights may be affected by an agreement executed in accordance with Section 8 (a) (3) of the Act.

We Will offer to Ernest Sydney Charlton immediate and full reinstatement to his former or substantially equivalent position without prejudice to any seniority, or other rights and privileges previously enjoyed, and make him whole for any loss of pay suffered as a result of the discrimination against him.

All of our employees are free to become, remain, or to refrain from becoming or remaining, members of Local No. 36 or any other labor organization, except to the extent that this right may be affected by an agreement executed in accordance with Section 8 (a) (3) of the Act.

GEORGE W. REED,  
(Employer).

Dated.....

By .....  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.



Appendix B

Notice

To all members of International Hod Carriers, Building and Common Laborers Union of America, Local No. 36, AFL, and to all employees of George W. Reed.

Pursuant to  
A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will Not cause or attempt to cause George W. Reed, his agents, successors, and assigns, to discharge or otherwise discriminate against any of his employees because they failed to obtain clearance from this union, except to the extent permitted by an agreement executed in accordance with Section 8 (a) (3) of the Act.

We Will Not in any other manner cause or attempt to cause George W. Reed, his agents, successors, and assigns, to discriminate against his employees in violation of Section 8 (a) (3) of the Act.

We Will Not restrain or coerce employees of George W. Reed, his agents, successors, and assigns, in the exercise of the rights guaranteed them in Section 7 of the Act.

We Will make Ernest Sydney Charlton whole for

any loss of pay he may have suffered because of the discrimination against him.

INTERNATIONAL HOD CARRIERS, BUILD-  
ING AND COMMON LABORERS UNION  
OF AMERICA, LOCAL No. 36, AFL.  
(Union)

Dated .....

By .....,  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Before the National Labor Relations Board

Twentieth Region

Case No. 20-CA-268

In the Matter of:

GEORGE W. REED

and

ERNEST SYDNEY CHARLTON, an Individual.

Case No. 20-CB-80

In the Matter of:

INTERNATIONAL HOD CARRIERS, BUILD-  
ING & COMMON LABORERS UNION OF  
AMERICA, LOCAL No. 36, AFL,

and

ERNEST SYDNEY CHARLTON, an Individual.

Room 634, Pacific Building,  
San Francisco, California  
Wednesday, July 5, 1950

Pursuant to notice, the above-entitled matters  
came on for hearing at 10 o'clock a.m.

Before: Peter F. Ward, Esq., Trial Examiner.

## Appearances:

THOMAS E. STANTON, JR., ESQ.,

San Francisco, Calif.,

Appearing on Behalf of George W.  
Reed.

WATSON A. GARONI, ESQ.,

200 Guerrero St.,

San Francisco, Calif.,

Appearing on Behalf of International  
Hod Carriers, Building & Common  
Laborers Union of America, Local  
No. 30, AFL.

BENJAMIN B. LAW, ESQ.,

San Francisco, Calif.,

Appearing for General Counsel of Na-  
tional Labor Relations Board.

GORDON W. MALLATRATT, ESQ.,

625 Market Street,

San Francisco, Calif.,

Appearing for E. S. Charlton.

\* \* \*

PROCEEDINGS

\* \* \*

Mr. Law: Mr. Examiner, I will at this time offer in evidence the formal documents in the case which I have marked as General Counsel's Exhibit 1, parts A to K, inclusive. [6\*]

\* \* \*

Mr. Law: General Counsel's Exhibit 1, part A, is the original charge filed by Ernest Sydney Charlton on July 6, 1949, against International Hod Carriers, Building and Common Laborers of America, A. F. of L., Local 36, Case No. 20-CB-80. General Counsel's Exhibit 1, part B, is the original charge filed by the same person on the same date against George W. Reed, the employer, Case No. 20-CA-268. General Counsel's Exhibit 1, part C, is the original Complaint in this matter issued by the Regional Director for the Twentieth Region of the National Labor Relations Board on May 12, 1950. Part D is an order of [7] the same date by the Regional Director consolidating the two cases for hearing and a notice of consolidated hearing. Part E is an affidavit of service of a copy of the original charge in Case No. 20-CA-268 upon George W. Reed, which affidavit has a copy of the return receipt attached to it. General Counsel's Exhibit 1, part F, is a similar affidavit of service of a copy of the original charge in 20-CB-80 upon the Respondent Union, and that exhibit also has a return receipt from the Union attached to it. General

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\* Page numbering appearing at top of page of original Reporter's Transcript of Record.

Counsel's Exhibit 1, part G, is an affidavit of service of the order consolidating cases and notice of consolidated hearing the Complaint and charges upon the two Respondents here and Ernest Sydney Charlton, the charging party. Part H is a notice of advancement of hearing date issued by the Regional Director on May 26, 1950, and part I is an affidavit of service of notice of advancement of hearing date upon the parties. Part J is a copy of the original Answer filed by the Respondent Union in this matter, and in that connection I might state that the original Answer was received in this office and, due to some error, whether clerical or my own, I do not know, the original charge, though we know it was received, cannot now be located, so a copy which was sent to us——

Examiner Ward: You referred to it as the charge. You mean the Answer?

Mr. Law: Yes. Did I say charge? I meant to speak of [8] the Answer of the Respondent Union.

Trial Examiner Ward: That is J?

Mr. Law: Yes. Now part K is the original Answer of the Respondent, George W. Reed. It may appear from the filing dates that both Answers were filed more than ten days after issuance of the Complaint. However, General Counsel is not seeking any judgment or other action here based on the tardiness of the Answers. There were reasons for that tardiness which I don't think are material here. We make no claim based upon it.

I will now offer General Counsel's Exhibit 1, parts A to K, inclusive.

Trial Examiner Ward: Any objections?

(No response.)

Trial Examiner Ward: General Counsel's Exhibit 1-A to 1-K, inclusive, will be received in evidence.

(Thereupon the documents above referred to were marked General Counsel's Exhibit No. 1-A to 1-K, inclusive, in evidence.) [9]

\* \* \*

Mr. Law: As the first witness for the General Counsel I would like to call as an adverse witness Mr. Joseph Murphy.

### JOSEPH A. MURPHY

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

#### Direct Examination

\* \* \*

Mr. Garoni: If the Trial Examiner please, I would like to respectfully suggest to the Trial Examiner that there seems to be a serious controversy here as to whether or not Interstate Commerce exists and as to whether or not under the circumstances the Board would have jurisdiction. Normally we would be [10] permitted the right to object to any testimony other than on the strict

(Testimony of Joseph A. Murphy.)

Interstate Commerce Commission basis. I offer a suggestion that we could save a lot of time and money to all litigants, as well as the time of the Board here, if it is definitely a question of Interstate Commerce, which it appears to be. It is not facetious.

Trial Examiner Ward: It is the practice of the Examiner to permit all Counsel to present their case in their own particular manner insofar as possible and when it comes questions of commerce they sometimes can take endless time in getting it out. So it has been the practice of this Examiner for many years to permit all Counsel to present their case in their particular style and after their usual practice to the end that when we get through we will have it all.

Mr. Garoni: If the Board definitely doesn't have jurisdiction, Mr. Trial Examiner, the proceeding of the case on merits would be irregular, and the District Court has held that there can be an objection to the introduction of other evidence.

Trial Examiner Ward: It is not always possible to determine instantly whether the record will show commerce or not. One party may think that it does and the other not, and it may take some time for the Examiner and the Board to determine whether the record on the whole does show commerce.

Mr. Garoni: The contention is why go into the merits [11] if the jurisdiction isn't there in the first place. In fact it would be illegal going into the merits.



(Testimony of Joseph A. Murphy.)

Trial Examiner Ward: We will permit Counsel to present it in his manner.

Mr. Law: I might state in this connection that ordinarily I would proceed only to establish jurisdiction first, but in this particular case I think the facts in my view, at the present time at least, are very simple, and for the convenience of witnesses I think it will be of considerableness, convenience, if we can go ahead as we now propose to do.

Mr. Garoni: For the record then I offer an objection to the introduction of evidence on the basis of Interstate Commerce.

Trial Examiner Ward: The objection will be overruled and you have a continuing objection.

Q. (By Mr. Law): Mr. Murphy, what is your full name and business address, for the record?

A. Joseph A. Murphy, 200 Guerrero Street.

Q. What is your position?

A. Business representative.

Q. Of what?

A. Hod Carriers, Local 36.

Q. What is the full and correct name of that?

A. International Hod Carriers, Building and Common Laborers of America. [12]

Q. Local No. 36? A. Local No. 36.

Q. And is the name—has the name also have A. F. of L. as a part of it?

A. No, we are A. F. of L.

Q. And for how long have you held that position? A. March, 1936.

(Testimony of Joseph A. Murphy.)

Q. In what geographical—I will ask you first where are the headquarters of Local 36?

A. 200 Guerrero Street.

Q. In San Francisco? A. Yes.

Q. And in what geographical area does the Union operate?

A. San Francisco County.

Q. And that is coterminus, is it not, with the City of San Francisco? A. Correct.

\* \* \*

Mr. Law: The next witness is also called as an adverse witness, Mr. Patrick McDonough. [13]

### PATRICK McDONOUGH

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Law:

Q. Mr. McDonough, will you state your full name and business address for the record?

A. Patrick McDonough, 538 - 25th Avenue.

Q. And is that San Francisco?

A. Yes, sir.

Q. What is your occupation, Mr. McDonough?

A. Brick mason.

Q. What is your present position?

A. Foreman, bricklayer.

Q. Foreman for what?

(Testimony of Patrick McDonough.)

A. Foreman for George Reed.

Q. And for how long have you held that position?

A. Oh, off and on ten or twelve years.

Q. Now do you know Mr. Joseph Murphy, who just testified?      A. Yes, sir.

Q. For how long have you known him?

A. Well, I guess he was Business Agent, I believe about that time.

Q. Since 1935?

A. Yeah, around that time, I guess.

Q. Now do you know Ernest Sydney Charlton?

A. Yes, sir.

Q. Do you see him in the room at the present time?      A. Yes, the man back there.

Q. Now did Mr. Charlton—I believe the pleadings establish adequately that Mr. Charlton was employed by Mr. Reed; is there any dispute on that score?

Mr. Garoni: No objection; we will stipulate.

Mr. Stanton: No objection.

Trial Examiner Ward: Parties all stipulate to that?

Mr. Garoni: Yes.

Mr. Stanton: Yes.

Mr. Mallatratt: Yes.

Trial Examiner Ward: The record will so show.

Q. (By Mr. Law): Now, Mr. McDonough, did Mr. Charlton enter Mr. Reed's employ during May of 1949?

(Testimony of Patrick McDonough.)

A. Well, I don't know the date. I don't know when he was employed. I just know he came to work there, that's all. I don't know the date.

Q. All right, you remember it as about that time?

A. Well, I couldn't say the month or the day or anything like that.

Q. You remember about how long he worked for Mr. Reed? In 1949?

A. No, I don't. Four or five weeks, I imagine; maybe not that. I don't think it was that long. [15]

Mr. Garoni: I will object to the conclusion of the witness and ask that it be stricken.

Trial Examiner Ward: Overruled.

Q. (By Mr. Law): All right; now in what capacity did Mr. Charlton work for Mr. Reed in 1949?

A. As a hod carrier.

Q. And on what job did he work?

A. Stonestown job.

Q. Is that the Stonestown Apartment project in San Francisco?

A. Yes.

Q. All right. Now, did you discharge Mr. Charlton?

A. Well—

Mr. Stanton: I object to that as calling for the conclusion of the witness.

The Witness: I just laid him off, I didn't discharge him at the time, no.

Q. (By Mr. Law): All right.

A. I told him he'd have to straighten out.

Q. Now you testified about a layoff of Mr. Charlton by you. Would you tell us in your own

(Testimony of Patrick McDonough.)

words the circumstances of that layoff?—just tell us what happened.

A. Well, when I came over there from another part of the building there I saw the hod carrier walking away with his duffel bag and I said, “What’s the matter?” “Well,” he said, “Joe, blow the job.” [16]

Mr. Garoni: I object to that as being hearsay as to what the other man said, not being present.

Trial Examiner Ward: Overruled.

Q. (By Mr. Law): What other hod carriers were there?

A. A man by the name of Sweeney.

Q. And who is Sweeney?

A. Another hod carrier.

Q. On the same job? A. That’s right.

Q. Was he in the employ of George Reed?

A. That’s right.

Q. All right. Then what happened?

A. Well, in the meantime Joe came up there.

Q. Who is Joe?

A. Joe Murphy. So I says to Joe, “What’s going on here?” “Well,” he says, “they can’t work with this man on the job.” So I says, “Well, let it go until noontime, Joe, and I’ll take care of him.” No, he had to be laid off right then.

Q. Excuse the interruption; did he say who was this man?

A. Well, he just said this man. I don’t think he mentioned the name or anything like that. He just said they can’t work with that man, Mr. Charlton.

(Testimony of Patrick McDonough.)

Q. All right; then what?

A. Well, he wouldn't agree to that, so I talked it over and I said, "You see what's the matter here, we'll have to hold [17] up here until we get this straightened out." So I laid him off then or called it a layoff. So in the meantime, during the noon hour we talked it over and I said, "What's the matter?" Joe in the meantime had told me he couldn't work there. I asked him why he couldn't work there and he said on account of the man not being clear. He said that the man would have to have a clearance; anybody on that job would have to have a clearance. So in the noontime I said to Syd, "Why don't you go down and get a clearance and I'll put you back to work; I'll be glad to do that." Well, he said he didn't think Joe would do that, so that's the end of the story. I never saw the man until the other day since he got laid off there or held up there or whatever it is.

Q. All right; now, throughout your account when you referred to "Joe" who did you mean?

A. I meant Mr. Murphy. He is known as Joe, Joe Murphy.

Q. And when you referred to "Syd" who did you mean?

A. I meant the other guy, Mr. Charlton.

Q. Now where did this conversation occur?

A. Right on the job.

Q. And what's "the job"?

A. Out at Stonestown.

Q. The Stonestown Apartment project?

(Testimony of Patrick McDonough.)

A. That's right.

Q. Now do you remember the date of that conversation? [18]

A. No, sir.

Q. May it be stipulated that that occurred on June 14, 1949?

Mr. Garoni: Agreed. I will stipulate to the conversation taking place on the date of the meeting out there.

Mr. Law: I am asking for a stipulation as to the date of the conversation without asking the parties to stipulate that Mr. McDonough's account is entirely true or correct.

Trial Examiner Ward: I see. And what is the desire of Counsel for the opposition?

Mr. Garoni: We will stipulate that there was a meeting on that date and some conversation took place, but not as to what conversation took place.

Mr. Stanton: Our pleadings admit that there was a layoff on that date of Mr. Charlton following a conversation with the Business Representative of the Union.

Trial Examiner Ward: The record will show that is the statement of Counsel.

Q. (By Mr. Law): Now at that time that you told Mr. Charlton to lay off, was anyone else present?

A. No, I don't believe there was.

Q. Where was Mr. Murphy at that time?

A. Well, he was in the vicinity. He had a car parked out by the job there within twenty or thirty feet, but he gave me the orders. He requested the man be laid off, but he wasn't there during the conversation with Charlton. He wasn't [19] there at

(Testimony of Patrick McDonough.)

that time. I agreed in the meantime to settle the thing to get the job going.

Q. All right. Now, how many other hod carriers were there on the job in Mr. Reed's employ at that time?

A. Well, I believe there were four more.

Q. And were there also bricklayers?

A. Yes, sir.

Q. How many bricklayers?

A. Five or six, anyhow.

Q. Were there any other employees of Mr. Reed other than hod carriers and bricklayers?

A. No, I don't believe there was.

Q. Now, very briefly, for the record, although this is probably something that the Board could take notice of, what do the bricklayers do, or what were they doing at that—on that project?

A. Laying bricks.

Q. What were the hod carriers doing?

A. Tending to the bricklayers.

Q. Do the hod carriers take the bricks and the mortar to the bricklayers?      A. That's right.

Q. Do the bricklayers work without hod carriers?

A. No. A real layer can't do their own hod carrying. If the hod carrier has gone away for ten or fifteen minutes he [20] might have sufficient stock up there to keep him going for ten or fifteen minutes, but otherwise they don't work without hod carriers.



(Testimony of Patrick McDonough.)

Cross-Examination

By Mr. Stanton:

Q. Mr. McDonough, would you remain for one or two further questions? In your direct examination you spoke about a statement by Mr. Murphy that unless Mr. Charlton would remove from the job, he, Murphy, would pull the job; is that right?

A. Yes, he said the hod carriers couldn't work with that man. That's the statement he made.

Q. So that your understanding of the term "pull the job" was that the other four hod carriers on the job would not work? A. That's right.

Q. Is that correct? A. Yes, sir.

Q. Do you know whether the other four hod carriers were members of Local 36 of the Hod Carriers Union?

A. Well, I assumed they were. They had been around here for years. They were sent out from the Union time and time again.

Q. Was there something said in the course of the conversation between you and Mr. Murphy concerning a clearance? [21] A. Yes, sir.

Q. What was said by Mr. Murphy on that subject?

A. He said no man could work on that job until he had been cleared through the Union.

Q. Did he say anything further with regard to the nature of the clearance?

A. No, he stated that was the law; that nobody

(Testimony of Patrick McDonough.)

could work on that job without being cleared. That's the law of the Union, I mean.

Mr. Stanton: I have no further questions at this time.

Q. (By Mr. Garoni): Mr. McDonough, were you present at the time the conversation between Mr. Murphy and Mr. Charlton took place?

A. No, sir.

Q. You spoke of Mr. Sweeney being pulled off the job; is that correct?

A. Well, yeah, he wasn't pulled off; he never went off the job. That's why I called him, he was walking away from the job; in other words, walking towards his stuff there.

Q. Did you speak to Mr. Sweeney about what was going on?

A. Yes, I asked—that's the first I knew of this trouble between Charlton and Mr. Murphy.

Q. What did Mr. Sweeney say to you?

A. He said Joe told him that he couldn't work with this man, and I knew who he referred to then. I guess the man's name was [22] mentioned, Charlton's name.

Q. Do you think that Mr. Murphy ordered him off the job?

A. He said they couldn't work there while Charlton was on the job; that's what he said.

Q. About what time of the day did this take place? A. Just before noon.

Q. How close to noontime?

A. About ten or fifteen minutes, I imagine.

(Testimony of Patrick McDonough.)

Q. Many men were leaving those jobs around that time, were they not?      A. Well——

Q. Did you observe men going to lunch about that time?

A. Well, this was about fifteen minutes to 12:00, I imagine.

Q. About what time do those men leave for lunch on the job?

A. Well, some of them leave five minutes ahead of time.

Q. Over to a lunch wagon?

A. Something like that.

\* \* \*

Q. And did you get any instructions from your employer, Mr. Reed, to discharge Mr. Charlton?

A. No, sir. [23]

Q. You did this on your own, this layoff, as you call it?      A. That's right.

Q. Did you actually tell Mr. Charlton that he was fired?      A. No, sir.

Q. You merely requested him to get a clearance card and come on back?      A. That's right.

Q. And he didn't do that?

A. I requested him to hold up until the thing got settled.

Q. In any event he never came back?

A. No, I never saw the man again.

\* \* \*

(Testimony of Patrick McDonough.)

Q. To get a little clearer picture of what Mr. Reed was [24] doing on the job, would you explain just what brick work was being done on the job?

A. Well, they was building some flower boxes in front of the apartment houses.

\* \* \*

### Redirect Examination

By Mr. Law:

Q. Mr. McDonough, on the Stonestown job who, for Mr. Reed, hired and discharged the hod carriers and brick layers?

A. Whoever is foreman on the job hires and fires them, as far as I know of. On my job I have that privilege.

Q. Did you do the hiring?

A. I didn't hire Mr. Charlton, no. He was sent from another [25] job.

Q. I am asking you, did you hire hod carriers?

A. When I needed them, yes.

Q. And did you discharge them if the occasion warranted?

A. Yes, sir. But if I hired a hod carrier I hired him through the Union. I couldn't just let a man come on the job that wanted to be hired; I couldn't do that. I got to call up the Hod Carriers Local and get a man through the Local.

Q. I take it, then, that you hired through the Hod Carriers Union; is that correct?

A. Well, the men I had, had been working for

(Testimony of Patrick McDonough.)

Reed for a number of years. They had been cleared on other jobs and naturally they didn't require a clearance when they worked in that shop.

Q. When you get new employees, do you clear them through the Hod Carriers Union?

A. They have to be cleared through the Hod Carriers Union.

\* \* \*

### Recross-Examination

By Mr. Garoni:

Q. In the normal course of hiring men, [26] don't you confer with Mr. Reed as to whether they should be hired or not?      A. No, sir.

Q. You do that individually on your own?

A. Yes.

Q. Let me ask, so far as hiring men through the Union, isn't that about the only source for the hod carriers that you have?      A. Yes, sir.

Q. And that is one of the predominant reasons why you hire them through the Union?

Mr. Law: I object on the ground that it is immaterial.

Trial Examiner Ward: He may answer.

A. That's the local procedure. We have to hire them through the Local. We are requested to, I guess.

Q. (By Mr. Garoni): At least to be sure you get the best hod carriers?

A. Yes. That's the only source, in fact.

\* \* \*

Mr. Law: Before I call the next witness, to make the [27] record clear on one point, I will state that I did not ask Mr. Murphy questions in detail about the Union of which he is Business Agent because I believe that it is established through the pleadings that it is a Labor Organization within the meaning of the Act. If there is any doubt on that score——

Trial Examiner Ward: I got the impression that both parties admitted that.

Mr. Garoni: That is correct.

Mr. Stanton: We haven't traversed that issue; we have assumed that, too.

Mr. Garoni: Well, the Unions do not deny the fact that they are Labor Organizations.

Trial Examiner Ward: You grant that?

Mr. Stanton: Yes, our pleadings—we haven't put that in issue. As a matter of fact, I think probably our answer——

Trial Examiner Ward: I just got the impression as I passed through the plea hastily that that part had been admitted.

Mr. Garoni: That's right.

Trial Examiner Ward: But to be certain that Counsel for the Respondent agrees.

Mr. Stanton: Mr. Trial Examiner, we're in no position to delve into the internal affairs of the Union, so that we're not bringing that up as an issue. We have admitted that allegation in our [28] Answer.

GEORGE REED

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Law:

Q. What is your full name and business address for the record?

A. George W. Reed, 1390 South Van Ness Avenue.

Q. That is in San Francisco?

A. That's right.

Q. And you are engaged as an individual in the business of a masonry contractor, are you not?

A. That's right.

Q. Do you work as a masonry contractor principally in the San Francisco area?

A. Mostly in the San Francisco area.

Q. You do take some jobs outside of the city, do you not?

A. Occasionally outside the city limits, yes.

Q. Now for how long have you been engaged as a masonry contractor?      A. As an individual?

Q. Yes.

A. Approximately nine years. [29]

Q. What materials do you regularly use in the ordinary course and conduct of your business?

A. Well, mostly brick, mortar, some tile, terra cotta, glazed tile units, would comprise just about the bulk of our work.

Q. And do you also use certain tools?

(Testimony of George Reed.)

A. No; certain tools, small tools and mortar mixers and wheelbarrows.

Q. All right. Now, I want to develop for the record a general picture of your operation. You usually work under contract, do you?

A. Mine are usually subcontracts under a general contract.

Q. And in the field of masonry contracting, do you specialize in any particular type of masonry work, or do you do whatever the contract may call for?

A. Whatever the contract may call for.

Q. Now, what classifications of employees do you have?

A. Bricklayers and hod carriers.

Q. I'll ask you how many bricklayers and hod carriers do you employ at the present time?

A. How many am I employing at the present time?

Q. Yes.

A. In San Francisco?

Q. Well, in your total operations at the present time.

A. Oh, I would say approximately fifteen bricklayers and ten hod carriers. [30]

Q. Now is that a representative figure of your average employment?

A. That is low; the average will run slightly higher through the year.

Q. Now, Mr. Reed, I want to ask you about your operations in the 1948 and '49 and in 1950 up to date, so I'll start with 1948 and I'll ask you what is the gross value of your operations for 1948 in terms of dollars?



(Testimony of George Reed.)

Q. (By Mr. Law): Mr. Reed, still referring to the 1948, I'll ask you what was the biggest job, dollarwise, that you [31] had in that year, the biggest contract?

A. I'd say the addition to the Pacific Gas and Electric Building, a hundred and forty-eight thousand.

Q. That was the dollar value of your contract, was it?      A. That's right.

Q. Now what type of structure was that that you were working on under that contract?

A. That was an addition to a telephone exchange. It was laying the brick walls for an addition to a telephone exchange.

\* \* \*

Q. (By Mr. Law): I am a little confused, Mr. Reed. You state that this was laying brick walls for an addition to a telephone exchange and that the contract was for the Pacific [32] Gas and Electric Company.

A. My contract was with Mudsen Brothers as a general contractor.

Q. And for what firm was the telephone exchange being constructed?

A. The telephone exchange was for the telephone company.

Q. Is that the Pacific Telephone and Telegraph?

A. Pacific Tel. and Tel., yes.

Q. So if I understood you to say Pacific Gas

(Testimony of George Reed.)

and Electric Company a while earlier—did I misunderstand you?

A. You did misunderstand me.

Trial Examiner Ward: The Examiner understood it to be the Pacific Gas and Electric Company. But the facts are that it is not the Pacific Gas and Electric Company, but the Pacific Telephone and Telegraph?

The Witness: Pacific Tel. and Tel.

Trial Examiner Ward: That straightens it out on the record.

Q. (By Mr. Law): Is that the Pacific Telephone and Telegraph Company, to use its full name? A. That's right.

Q. Now, how long were you on that job? From what date until what date, giving the dates as close as you can remember them?

A. Approximately six months; I don't remember the dates.

Q. How about the months? [33]

A. Well, if I were to guess at the months it would only be a guess without looking at the records and the books I couldn't guess.

Q. It was during 1948, you know that though, is that correct?

A. As I remember it it was in 1948.

Q. Now, you say this building was a telephone exchange?

A. Addition to a telephone exchange; to the present telephone exchange.

(Testimony of George Reed.)

Q. I see. And it was located in San Francisco?

A. Yes, sir.

Q. Now what other big jobs did you have in 1948, if any?

A. Oh, if I remember right I did the PG & E in '48 for Dahl, Young and Nelson.

Q. Now what was the value of that contract?

A. Sixty odd thousand; sixty one or sixty two, sixty three; some place in there; around sixty thousand.

Q. You say that was on a sub station for the Pacific Gas and Electric Company?

A. That's right.

Q. In San Francisco?                   A. That's right.

Q. And how long did that operation take? Your part of it.

A. As I remember about three months.

Q. Now what other large jobs did you have in 1948?

A. Oh, in '48 I did hundreds of chimneys and fireplaces, [34] mainly for Bohannon over at San Lorenzo Village.

Q. Now was that work for Bohannon in one large contract or one contract?

A. It was in two or three small contracts on the one project.

Q. What was the aggregate value of the two or three contracts?

A. Oh, around twenty-five or thirty thousand dollars.

(Testimony of George Reed.)

Q. And that, you say, represented fireplaces and chimneys?      A. Fireplaces and chimneys.

Q. About how many fireplaces and chimneys would that contract cover, or those contracts?

A. In that unit I believe we put up three or four hundred.

Trial Examiner Ward: Off the record.

(Discussion off the record.)

Trial Examiner Ward: On the record.

Q. (By Mr. Law): Now you say this was at San Lorenzo, California?      A. That's right.

Q. And what was the nature of the project, the total project?

A. It's a residential project, a small one family dwellings.

Mr. Garoni: May I ask you what project are we talking about?

The Witness: Bohannon, San Lorenzo Village.

Q. (By Mr. Law): Now this Bohannon, do you know—is that an individual or a corporation?

A. It's David Bohannon Company. [35]

Q. That is a corporation, is it not?

A. I believe it is.

Q. And he is the builder of the housing project in San Lorenzo?      A. That's right.

Q. Now was that a subcontract on your part or did you contract directly with Bohannon Company?

A. That was a subcontract under Bohannon. Mine are all subcontracts unless I deal directly with the owner.

Q. And Bohannon then was the general con-

(Testimony of George Reed.)

tractor rather than the owner, or was he both in this case?

A. He was both in this case. [36]

\* \* \*

Mr. Law: Mr. Examiner, before I resume questioning of Mr. Reed I would like to propose to the parties a stipulation which we have discussed off the record and that is that the Pacific Telephone and Telegraph Company and the Pacific Gas and Electric Company to which Mr. Reed referred in his testimony this morning are Public Utilities with their main offices in San Francisco, California. Can that be stipulated?

Mr. Stanton: We will so stipulate.

Mr. Garoni: So stipulated.

Trial Examiner Ward: The record will so indicate.

Q. (By Mr. Law): Mr. Reed, you testified this morning about a telephone exchange upon which you had a masonry contract being built for the Pacific Telephone and Telegraph Company. Did you visit the job site during your work on that building?  
A. Several times, yes.

Q. Could you describe the building for the record?

A. Well I can describe it if you can get a picture from my [38-39] description. The original building was a three story reinforced concrete with brick curtain walls and the addition consisted of two stories to go on top of the original building and a

(Testimony of George Reed.)

five story annex alongside the same structure so that the whole building now is a five story building where originally it was a three story.

Q. And if you know, is the building used as a telephone exchange?

A. To the best of my knowledge it is.

Q. Now, similarly you testified about a substation upon which you worked, the substation being built for the Pacific Gas and Electric Company. Did you visit that job site?

A. Several times.

Q. Could you describe that substation?

A. Well, that was a new building, reinforced concrete building with masonry facing and that brings power from the Hunters Point substation and it brings it into the substation at Eighth and Mission and it distributes from there.

Q. And when you refer to the Hunters Point plant are you referring—well I won't characterize. It is a steam generating plant of the Pacific Gas and Electric Company?

A. That's right.

Q. At Hunters Point.

A. Yes.

Q. Is that the one referred to by the Pacific Gas and Electric [40] Company as Station B?

A. I believe so.

Q. All right. Now, turning to 1949, what was your first major job during 1949?

A. Well, I'll give you another Pacific Tel and Tel job at Pacific and Capp.

Q. What was the value of that contract?

A. Approximately one hundred fifty thousand.

Q. And is that in San Francisco?

A. Yes.

(Testimony of George Reed.)

Q. And what was the job on that, I mean what type of building did it involve?

A. That was a reinforced concrete building with a terra cotta facing.

Q. And what was the nature of the building, for what purpose was it used?

A. That is the Mission office that is used partly as office building and partly as an exchange, I suppose, because there was a lot of equipment on the upper floors. It was an office building combination.

Q. The hundred fifty thousand dollar figure you gave at first was the value of your contract, was it not?

A. That's right.

Q. And that building is ten stories or over, is it not?

A. Nine or ten. I think it went to ten. I think it's a [41] nine story building.

Q. And that building was an entirely new building?

A. That was a new building.

Q. Now by Pacific Tel and Tel you refer to the Pacific Telephone and Telegraph Company, it's the same company for which you had worked in 1948?

A. That's right.

Q. All right, what was the next major job for 1949?

A. Well, when you say next these jobs in 1949 as I can look at them here, they all dovetail. The next job we really started was the Stonestown project.

Q. Now what was the value of your contract there?

(Testimony of George Reed.)

A. Approximately a hundred thousand dollars.

Q. And that was in San Francisco?

A. That's right.

Q. Now this Stonestown project was an apartment development, was it not? Or is it an apartment development?           A. Correct.

Q. Now what work did your contract cover?

A. My contract, the largest percentage was garages, concrete block garages, open garages with flower box trimmings around wood structures and boiler room chimneys.

Q. How many boiler room chimneys did that cover?           A. Five or six chimneys in there.

Q. Did those chimneys—were they intended to serve the [42] heating plant, if you know, which serves the Stonestown apartments?

A. I suppose they were, although they were only vent chimneys because the heating plant is all gas. The heating plants and the laundries, they have them separated from the apartments.

Q. All right, now, it was on this project that Mr. Charlton's employment was terminated, was it not?

A. That's right.

Q. All right. Now, what was your next major contract in 1949?

A. Well, I wouldn't say the next, but a similar contract at Hillsdale Apartments in San Mateo for the Bohannon organization; twenty-five thousand dollar contract similar to Stonestown.

Q. What are Hillsdale Apartments?



(Testimony of George Reed.)

A. They are in San Mateo just across from the Bay Meadows race track.

Q. Is it a garden apartments development?

A. It's a garden apartments development very similar to Stonestown and my work was similar; concrete block garages, a few chimneys and mostly flower box work, trimmings around the rest of the buildings.

Q. Now your next major job in 1949?

A. Well, I did the addition to the Macy's Store.

Q. Is that in San Francisco?           A. Yes.

Q. What was the value of that? [43]

A. Approximately fifty-seven thousand dollars.

Q. Here again that figure referred to the value of your contract?           A. Right.

Q. Now what was the work you did for them?

A. Installing a terra cotta face and interior tile partitions.

Q. And what is the size of the building?

A. That is an eight or nine story building.

Q. Is that new construction?

A. That was a new construction addition to the present building.

Q. And the Macy's Store to which you referred is a San Francisco department store, is it not?

A. That's right.

Trial Examiner Ward: Macy's?

Mr. Law: Macy's.

Trial Examiner Ward: Part of the New York Macy's? Pardon the interruption, it's immaterial. I know there is a Macy's in New York.

Q. (By Mr. Law): What is the correct name,

(Testimony of George Reed.)

if you know, Mr. Reed, of Macy's of San Francisco?

A. M-a-c-y apostrophe s, as far as I know. I believe that's the way you write a check out to them.

Q. Now what was your next large job in 1949?

A. Standard Oil addition. [44]

Q. All right. Now what was the value of your contract there?

A. Approximately two hundred thousand.

Q. You say the Standard Oil addition. To what are you referring?

A. That is an addition to the Standard Oil office building.

Q. Is that the office building of the Standard Oil Company of California? A. That's right.

Q. And if you know, is that their main office building located at 225 Bush Street, San Francisco?

A. That's right.

Q. Now what was the size of this building, or what is the size?

A. A twenty-two stores, I think.

Trial Examiner Ward: Twenty-two?

The Witness: Yes.

Q. (By Mr. Law): And that is a new building?

A. That is a new structure, yes.

Q. It adjoins——

A. It adjoins the old structure.

Q. And what work did you do on that?

A. Terra Cotta and brick facing.

Q. Now what other major jobs in '49?

A. That's about the extent of '49.

(Testimony of George Reed.)

Q. You did have other smaller jobs, did you?

A. Oh, jobs that run from twenty-five dollars up to three or four thousand.

Q. All right. Now, 1950. What major jobs have you had this year?

A. Practically none. I have started the Soledad prison job at Soledad, California.

Q. And the approximate size of the contract there?

A. Eighty thousand.

Q. Is that a State prison?

A. That's a State prison.

Q. And have you had other smaller jobs this year?

A. I am also doing a job at Ukiah, the Mendocino County courthouse which is a twenty thousand, approximately twenty thousand dollar job.

Trial Examiner Ward: That is outside of San Francisco?

The Witness: Yes, sir.

Trial Examiner Ward: That is the first job you have mentioned out of the City? [46]

\* \* \*

Q. All right. Now, you testified that in your ordinary operations you use brick and mortar, tile, terra cotta and glazed tile units?

A. That's right.

Q. In 1949 what was the approximate value of those materials used by you?

A. Approximately eighty thousand dollars.

Q. And where did you obtain the materials?

A. They are all obtained through local dealers

(Testimony of George Reed.)

here in town. They are all manufactured locally. Some of the products come directly from the plants like brick and glazed tile and terra cotta, although they have their offices here, the orders are put in, but they truck directly from the plants to the job.

Q. If you know, are all of those products made in California?

A. All of them are made in California.

Trial Examiner Ward: Off the record.

(Discussion off the record.)

Trial Examiner Ward: On the record.

Q. (By Mr. Law): Only one or two other questions, Mr. Reed. I notice that in the Answer filed in this matter which you verified there is the statement in paragraph two that less [47] than three per cent of the amount of eighty thousand dollars represented materials and supplies originating from points outside the State of California. To what materials do you refer by that less than three per cent? I realize that could be.

A. Well, we did buy a small job for a residence out in St. Francis Wood with the Indiana limestone in 1949 and the price of that limestone delivered here was around nineteen hundred dollars.

Q. And that came from Indiana, did it?

A. Indiana.

Q. Have you purchased any materials from outside the State in 1950?      A. No, I have not.

Mr. Law: No other questions.

Trial Examiner Ward: You may cross-examine.

(Testimony of George Reed.)

Cross-Examination

By Mr. Garoni:

Q. Mr. Reed, I would like to examine these materials a little bit more that you spoke of that you are using in your business. For instance the hollow glazed tile, where is that manufactured, please?

A. That's made in two places surrounding the Bay. One at Niles, California, and one at Lincoln, California.

Q. Where is the material from which the hollow glazed tile is manufactured obtained from?

A. Well, that's clay right out of the ground at the plant. [48]

Q. In the State of California? A. Right.

Q. How about terra cotta tile, where is that manufactured?

A. That's manufactured at the same plants. Also there is another plant up at Stockton, California that manufactures hollow tile.

Q. Where is the material that the terra cotta is made from obtained?

A. They set their plant up right alongside of a bed there where they can take it out of the ground and burn it.

Q. That is in the State of California also?

A. Right.

Q. How about the heitite blocks. You testified, did you that you get those glass blocks?

A. Heitite blocks are made at San Rafael.

Q. And where is the material obtained from from which these blocks are made.

(Testimony of George Reed.)

A. At San Rafael, right at the plant.

Q. How about the cement, where is that manufactured?

A. Cement is manufactured at Redwood City, Santa Clara, Mt. Diablo; all local cements.

Q. And all of these places are within the State of California, that you are testifying up to this point?

A. Yes, sir.

Q. Now the materials—the raw materials from which the [49] cement made is it obtained within the State of California?

A. Yes, it is dug out of the hills right alongside the plant.

Q. Where is the mortar manufactured?

A. Well, mortar is the combination of cement, lime and sand.

Q. And that is made particularly where?

A. You mix that up yourself. We mix it ourselves.

Q. How about brick, where is it manufactured?

A. Brick is manufactured—some at San Rafael, some at Port Costa and some at San Jose. Oh, there is a couple of more plants right in this vicinity.

Q. And that is all made—the material from which that brick is manufactured is obtained from where?

A. It is a local—right where the plants are located.

Q. Within the State of California?

A. Yes.

Q. You testified that there were several items,

(Testimony of George Reed.)

Indiana limestone, structural glass block, I believe that was obtained from without the State?

A. That's right.

Q. Were they obtained for a number of jobs or just one or two particular jobs?

A. Just one or two. I used very little glass blocks and very little Indiana limestone. There isn't a great deal of Indiana limestone.

Q. Let's take the period of 1949 as an example. How much [50] of the limestone was shipped in to you from out of State, what was the limestone, do you recall?

A. Approximately nineteen hundred dollars.

Q. And how about the value of this structural glass that you received within the twelve months period of 1949?

A. As I recall it was very minor because I didn't have any glass block jobs to speak of in '49.

Q. How about 1948. In that entire year in these particular materials that you claim you used in your business, did you obtain any of those materials out of the State in 1948?

A. I don't believe I did.

Q. Up to this point in the year 1950 did you obtain any materials out of State whatsoever?

A. No.

Q. Do you contract, or have you contracted in the year 1948 for any services or sales outside of the State of California? A. No, I have not.

Q. How about the year 1949? Did you do any

(Testimony of George Reed.)

jobs or sell any material outside of the State of California?      A. No.

Q. And for this year 1950 have you any jobs outside of the State of California?

A. I have not.

Q. Although you do a great deal of commercial work you are also involved in residential work to a great extent, is that [51] right?

A. That's right.

Q. In particular the Stonestown job, that is residential apartments?      A. That is right.

Q. As a matter of fact about what counties in those three years of 1948—in these three years of 1948, 1949 and the balance of 1950 now, in about what counties in California have you done these jobs?

A. Mostly counties bordering San Francisco Bay. I don't recall all the Bay area counties.

Q. What is the greatest distance in the three years which we are speaking about that you travelled or had any jobs away from San Francisco?

A. The jobs that I am doing at present, Soledad and Ukiah.

Q. Those jobs aren't yet being done but are to be done in the future?

A. They are under construction now. I am working on both jobs.

Q. In 1948 you testified about doing a job for the Pacific Telephone exchange. Was there any dispute arose on that job, any manner of Labor dispute?

A. Not that I can remember.



(Testimony of George Reed.)

Q. How about the Pacific Gas and Electric sub-station that you accomplished in 1948, was there a Labor dispute on that job? [52]

A. No Labor disputes.

Q. In 1949 on all these jobs that you have testified to in the record outside of the Stonestown job was there a Labor dispute of any sort?

A. No.

Q. And to this point in 1950 outside of the Stonestown job in this case has there been a Labor dispute?

A. I haven't had a Labor dispute of this kind in thirty years.

Q. What was the total volume, Mr. Reed, in the twelve months period of 1949 on commercial jobs?

A. Commercial I don't remember. The whole volume was around four hundred fifteen thousand dollars.

Q. How about residential jobs, what was the total volume in the year 1949?

A. I don't remember. I imagine about 50-50 on that.

Q. About—pardon me, I didn't hear you.

A. It was about thirty per cent residential, according to the figures I have got down here.

Q. Do you have an arithmetical summation of the year 1949? A. I have in my possession.

Q. Do you wish to use that. Have you any objection, Counsel, to that last remark of mine?

Mr. Law: I have no objection.

(Testimony of George Reed.)

A. Commercial volume was \$415,000; residential was \$66,000.

Q. (By Mr. Garoni): In this commercial valuation that includes [53] the Pacific Telephone and Telegraph job, Pacific Gas and Electric substation job and the Standard Oil Building?

A. That's right.

Q. Do you know offhand about how many other commercial buildings you accomplished that time outside of these three buildings?

A. Approximately fifteen.

Q. About how many residential buildings did you contract for during the year 1949, the twelve months. A. Seven.

Q. What was the total of your gross business during the twelve months period in 1949 including commercial and residential? A. \$481,869.25.

Mr. Garoni: Just for the purpose of the record, to simplify this, if there is no objection by Counsel here, we have computed what the total value of the materials for the twelve months period in 1949 out of State in percentages was to the gross purchases which amounts to about two and a half to three per cent of the gross purchase was purchased out of State.

Trial Examiner Ward: You may state that.

Mr. Garoni: No objection, I assume?

Mr. Law: No objection to the statement; I don't follow the arithmetic, but I don't dispute it either.

Mr. Garoni: It is about two thousand dollars out

(Testimony of George Reed.)

of [54] State out of eighty thousand, amounts to about two and a half per cent out of State purchase of materials. [55]

\* \* \*

**Redirect Examination**

\* \* \*

Q. (By Mr. Law): Now, I'm just a little confused, Mr. Reed. You mentioned another Stonestown project or contract for [57] \$30,000.00?

A. That's right. The whole contract on the job was around a hundred thousand dollars, but evidently in compiling 1949 this is the amount of material and work done in '49 on Stonestown; the balance must have been done in the latter part of '48, but the girl was only asked to compile '49.

Q. Yes, all right. Now, one other question. Do you at the present time have any executed contracts for major jobs. I'm not asking about prospective jobs but only those for which you have an actual contract. A. You mean signed up?

Q. Yes, other than those you've mentioned.

A. No, I have none. I have a couple of small jobs in town and that's all.

\* \* \*

## W. BOYD STEWART

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows: [58]

## Direct Examination

By Mr. Law:

Q. What is your business address, Mr. Stewart?

A. 3455 19th Avenue, San Francisco.

Q. What is your business or occupation?

A. I am secretary for Stoneson Development Corporation and other Stoneson corporations.

Q. How long have you been secretary of the Stoneson Development Corporation?

A. For the Stoneson Development Corporation—it was organized in 1947 so I would be four years with that corporation.

Q. Now, what is Stoneson Development Corporation?

A. The Stoneson Development Corporation are home builders and general contractors.

Q. Now, is that a corporation, is it?

A. That's right.

Q. Is it the developer of Stonestown apartment project? A. Yes.

Q. Now, where is that project located?

A. It's located at 3455 19th Avenue.

Q. That is the address?

A. That's the address of the office, the executive office, and it's located in that immediate vicinity.

(Testimony of W. Boyd Stewart.)

Q. All right. Now, what is the Stonestown apartment project?

A. Well, it's a part of a large building project being developed by Stoneson brothers, consisting of apartment houses for residence, and commercial area.

Q. Do you know about how many apartments are there in the project? A. 683 apartments.

Q. And how much commercial area? That is, covered commercial area.

A. The covered commercial area? It would be in excess of 700,000 square feet.

Q. Now, when was the project started?

A. Along the latter part of 1948, along in September, 1948.

Q. And when is the entire project planned to be completed?

A. Approximately two years from now.

Q. Now, in what stage of development are the apartments which you mentioned, the living apartments.

A. The apartment buildings are practically 99% completed. They will be completed in another 30 to 45 days. The commercial area is in its infancy; it's just beginning.

Q. Now, how large are the apartments?

A. They vary. There are some one-bedroom, some two-bedrooms, some three-bedrooms.

Q. And to what use do you propose to put the commercial area when it is completed?

A. That will all be leased to merchants.

Mr. Garoni: I am going to object as [60] incom-

(Testimony of W. Boyd Stewart.)

petent, irrelevant and immaterial. There is no allegation here of secondary boycott against Stoneson project. We are concerned primarily with Mr. Reed and the disputes concerning Mr. Reed, and I think that is not the issue of the case at all.

Trial Examiner Ward: The objection is overruled, but the plans for the future, that's not material.

Q. (By Mr. Law): All right, now, Mr. Stewart. Approximately what is the total construction cost of the Stonestown project.

A. That's rather difficult to answer. It's part of a large project and I could say in excess of ten million dollars.

Q. Now, what materials, speaking generally, does the Stonestown Development Corporation use in the construction of Stonestown apartment project?

A. There's frame buildings consisting of lumber, stucco, and the concrete buildings, consisting of lumber, concrete and such.

Q. And stucco?

A. Together with various other materials to complete the job: Steel and so forth.

Q. Are the kitchens in the apartments equipped?

A. Yes.

Q. What are they equipped with?

A. Stove and refrigerator and steel cabinets.

Q. And how about the sink?

A. Yes, they have sinks. [61]

(Testimony of W. Boyd Stewart.)

Mr. Garoni: Well, I object to your whole line of questioning. I firmly believe that the criteria of interstate commerce is not Stonestown project, which the evidence will develop they don't even know how much material came from where, and I know Mr. Stewart does not know that. The criteria is whether Mr. Reed is involved in interstate commerce. He could take a job fifteen minutes for a railroad company and then when a dispute arises say that Mr. Reed was in interstate commerce because he did a fifteen minute job for a railroad company.

Trial Examiner Ward: Well, if that's the questions that have the objections.

Q. (By Mr. Law): What is the approximate value of window sashes used in the project?

A. Do you object to me referring to my list?

Q. I think not.

Mr. Stanton: May we see the list?

A. In excess of a hundred thousand dollars.

Q. What type of sash are those?

A. Steel sash.

Q. And what company supplied them?

A. Salco Steel Products Company.

Q. Its address? [62]

A. 401 Tunnel Avenue, San Francisco.

\* \* \*

Q. (By Mr. Law): Mr. Stewart, I will show you a list which has been marked for identification

(Testimony of W. Boyd Stewart.)

as General Counsel's Exhibit 2, and will ask you what that is.

A. That is a list of the subcontractors on the Stonestown project.

Q. With Stoneson Development Corporation being the prime contractor? A. Yes.

Q. And does the list also show the address of each of the sub-contractors? A. Yes.

Q. And what is the figure on the right-hand side of each of the two pages of the exhibit?

A. \$44,690.00 on Page 1—

Q. I mean, what do those figures represent?

A. That's the contract with the Alta Roofing Company of 976 Indiana Street, San Francisco, California, for \$44,690.00, covering the roofing.

Q. In other words, does each figure in that [63] column represent the value of the particular subcontractor's contract?

A. Approximately, yes.

Q. Thank you. Now, on the front page of the exhibit to the right of the name H. Peira and Son—that is the third from the bottom—under the heading "Value of Contract", the figure \$15,000.00 is written in in pencil. A. Yes.

Q. Is that the approximate value of H. Piera and Son's contract? A. Yes.

Mr. Law: I'll offer in evidence General Counsel's Exhibit No. 2.

Mr. Garoni: I'll object to that as incompetent, irrelevant and immaterial. We are not charged with the disputant Stonestown; we are charged with Mr.



(Testimony of W. Boyd Stewart.)

Reed. If they discovered the situation, why, we'd be in a dispute with Stonestown. There is no allegation incorporated that there is a dispute with Stonestown. This is going pretty far afield. We could never hope to prove how much of this material came over interstate commerce. It would take the whole balance of the year to do that.

Mr. Stanton: The employer will object to the introduction of this testimony on the ground that it's irrelevant, incompetent and immaterial, the particular basis for this [64] objection being that it is going far afield and it departs from the measure that has been used by the Board in other cases in testing its jurisdiction.

Trial Examiner Ward: The objection will be overruled. The exhibit will be received, subject however that at the close of the hearing, counsel may move to strike the exhibit and the Examiner asks counsel to remember to make the motion and not to leave it up to him to remind you of it.

(The document heretofore marked General Counsel's Exhibit No. 2 for identification was received in evidence.)

(Testimony of W. Boyd Stewart.)

## GENERAL COUNSEL'S EXHIBIT No. 2

## Sub-Contractors

Name and Address	Value of Contract
Alta Roofing Company ..... 976 Indiana, San Francisco, Calif.	\$ 44,690.00
Atlas Heating & Ventilating Co. .... 557-567 Fourth St., San Francisco, Calif.	21,279.20
Barker Bros. .... 711 South Fowler, Los Angeles, Calif.	342,574.88
Bathroom Accessories Supply ..... 762 Clementina St., San Francisco, Calif.	7,139.49
California Wire Cloth Corp. .... 1245 Howard St., San Francisco, Calif.	1,498.00
Ceco Steel Products Co. .... 401 Tunnel Ave., San Francisco, Calif.	113,182.00
Clingan & Fortier ..... 1526 Wallace Ave., San Francisco, Calif.	37,950.00
Theo De Friese ..... 1222 Sutter St., San Francisco, Calif.	40,600.00
Fair Manufacturing Co. .... 617 Bryant St., San Francisco, Calif.	164,187.00
W. P. Fuller & Co. .... 301 Mission St., San Francisco 19, Calif.	50,371.20
Gleason & Company ..... 6355 Hollis St., Oakland 8, Calif.	64,089.00
P. Grassi & Company ..... 356 Church St., San Francisco, Calif.	2,952.00
Huettig & Schrom ..... P.O. Box 798, Palo Alto, Calif.	26,576.97
L. J. Kruse Co. .... 6247 College Ave., Oakland, Calif.	779,341.47
Chas. A. Langlais ..... (Approx.) 474 Bryant St., San Francisco, Calif.	375,174.96
Mills & Hinz Tile Co. .... (Approx.) 5945 Mission St., San Francisco, Calif.	64,031.55
Otis Elevator Co. .... 1 Beach Street, San Francisco, Calif.	146,690.00
Palace Hardware Co. .... (Approx.) 569 Market St., San Francisco, Calif.	30,029.50

## (Testimony of W. Boyd Stewart.)

## Sub-Contractors—(continued)

Name	Value of Contract
U. Peira & Son..... 120 Broadmoor Dr., Daly City, Calif.	\$ 15,000.00
Patent Scaffolding ..... 270-13th St., San Francisco 3, Calif.	(Approx.) 14,463.71
Geo. W. Reed ..... 1390 S. Van Ness, San Francisco, Calif.	(Approx.) 110,239.00
Thos. B. Spelman ..... 600-16th Street, Oakland, Calif.	163,736.00
Steelform Contracting Co. .... 666 Harrison, San Francisco 7, Calif.	37,280.00
Turner Resilient Floors ..... 68 Rincon, San Francisco, Calif.	93,572.00
Luther M. Warda ..... 4150 Irving, San Francisco, Calif.	438,808.00
Western Fiberglas Supply Co. .... 739 Bryant St., San Francisco, Calif.	13,927.00
D. Zelinsky & Sons ..... 165 Grove St., San Francisco, Calif.	163,241.00
Martin Ruane ..... 232 Taraval St., San Francisco, Calif.	325,051.00

Received September 21, 1949.

Received in evidence July 5, 1950.

Q. (By Mr. Law): Now, Mr. Stewart, was the list of names, addresses and figures, or, were the lists appearing on General Counsel's Exhibit No. 2 prepared from the records of the Stoneson Development Corporation? A. They were.

Q. Were they prepared under your direction?

A. They were. [65]

(Testimony of W. Boyd Stewart.)

Cross-Examination

By Mr. Garoni:

Q. Mr. Stewart, how did you arrive at the figure of \$10,000,000, please?

A. Estimating the cost of the construction work to be completed within the next two years.

Q. It isn't the construction work up to this point, is it?

A. No. It is as a part of the entire project.

Q. As a matter of fact, General Counsel's Exhibit No. 2, adding all those figures is nowhere near \$10,000,000?

A. That's right.

Q. I have summed it up to be about \$3,688,000?

A. That's approximately what it adds up to, yes, that's a [72] part of the entire project.

\* \* \*

Redirect Examination

By Mr. Law:

Q. General Counsel's Exhibit 2 lists the subcontractors, I take it. Does the Stonestown Corporation [74] subcontract out the entire job?

A. No, sir, they do not.

Q. They do part of the purchasing of materials and some of the work themselves?

A. They do, yes.

Q. All right. Now, just one other question I should have covered on direct. What was the approximate value of the lumber purchased by Stones-

(Testimony of W. Boyd Stewart.)

town Development Corporation for the project to date?

A. Approximately \$385,000 worth of lumber.

Q. And from what company or companies, did you purchase that lumber from a number of companies? A. From about six companies.

Q. And did you purchase the major portion of it from a single company? A. Yes, sir.

Q. Now what was that company?

A. J. H. Pomeroy and Company, San Francisco.

Q. And what is the approximate value of lumber purchased from the J. H. Pomeroy Company?

A. \$295,000.

Mr. Law: No other questions.

### Recross-Examination

By Mr. Garoni:

Q. Does this lumber include some lumber to be used on the commercial project in the future? [75]

A. No.

Q. Do you have any impression at all how much of this material came direct to the project over the state line? A. No, I do not.

\* \* \*

E. P. WRIGHT

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Law:

Q. What is your business address, Mr. Wright?

A. 225 Bush Street, San Francisco.

Q. What is your business or occupation?

A. I am manager of the building design construction department for Standard Oil Company of California.

Q. For how long have you held this position?

A. A little over five years.

Q. Now what are your duties as manager of the building design and construction department for Standard Oil of California?

A. Largely to coordinate the design and construction of major building projects for the [76] Company.

Q. And are you, through that job, familiar with the company's major building project of the past five years and up to the present time?

A. Yes.

Q. And now by the company I refer to the Standard Oil Company of California. Is the Standard Oil Company of California now engaged in the construction of an addition to its main general office building here in San Francisco?

A. Yes, it is.

(Testimony of E. P. Wright.)

Q. And what is the nature of that addition?

A. Well, it consists of a twenty-two story addition to our present home office building at 225 Bush Street.

Q. When you speak of a twenty-two story addition, does that refer to added stories on top or beside?

A. Alongside. It's on the adjacent lot for the full length.

Q. And what is the approximate square footage of the new addition now under construction?

Mr. Stanton: I wish to interpose an objection at this time to this line of questioning on the ground that it is irrelevant, incompetent and immaterial, and on the further ground that it is not the type of testimony that does not bear on the type of connection with Interstate Commerce which the Board has held to be material.

Trial Examiner Ward: The objection will be overruled. You have the continuing objection the same as the Examiner [77] gave counsel for the union on all this type of testimony.

Q. (By Mr. Law): Can you answer the last question.

A. Well, it all depends on what the gross square feet would be. The lot is 68 feet 9 inches by 137 feet six inches.

Q. And there are twenty-two stories?

Q. There are twenty-two stories covering that entire lot.

Q. And are the stories each of the same area?

(Testimony of E. P. Wright.)

A. Each of the same area up to the nineteenth, then there is about a three foot step back on the Bush Street side and a smaller one on the other side.

Q. And now is the addition being put to use yet by the company?

A. It is partially occupied at the present time.

Q. And what is the nature of the use to which it is being put?

A. Well, this building is merely an enlargement of the Standard Oil Company's home office main headquarters and various departments occupy various floors, some in the new section, some in the old, some in both.

Q. All right. Now, I'm not interested in any confidential figures, Mr. Wright, but what is the approximate construction cost of the entire addition?

A. Well, I think I can safely say in excess of \$6,000,000.

Q. And it is an essentially concrete structure with reinforcing steel or is it a steel structure with concrete or brick facing? [78]

A. Well, it is basically a steel structure with concrete walls, floors and with a terra cotta indented facing on the outside.

Q. Now approximately what was the value of the steel going into the structure?

A. I only know the value—the approximate value of the contract, and that includes the steel and to erect it and that is slightly under \$900,000.



(Testimony of E. P. Wright.)

Q. Now was that steel manufactured in California, fabricated? A. No.

Q. Where was it fabricated?

A. It was fabricated in the east.

Q. When you use the term "the east" what do you mean?

A. Oh, basically east of the Mississippi.

Q. When did the construction of this building begin?

A. Just about two years ago; that would bring it about the middle of 1948.

Q. And how near completion is it now?

A. Oh, fairly close to 90 per cent.

Q. Has all the masonry work in the building been completed?

A. Substantially all of it.

Q. Was George W. Reed the masonry contractor?

A. Yes, subcontractor under the general contractor.

Q. Now, at any time during the construction of this building has the construction work been stopped for any reason? [79]

Mr. Garoni: I object as incompetent, irrelevant and immaterial.

Trial Examiner Ward: Sustained.

Q. (By Mr. Law): At any time during the construction has there been strikes of construction employees on the job or any of them?

Mr. Garoni: Same objection.

Trial Examiner Ward: What does General Counsel intend to prove by this line of questioning?

(Testimony of E. P. Wright.)

Mr. Law: I take it that this is a very legitimate part of the total background of the situation we have here. I intend to find out whether or not when some building construction workers walked off the job whether or not the construction is affected one way or another.

Trial Examiner Ward: The purpose of it all in the end is to prove that the Respondent Reed is engaged in Interstate Commerce, is that it?

Mr. Law: No, that he is engaged in business very definitely affecting Interstate Commerce.

Mr. Garoni: If there was a Labor dispute I don't see how it could be attributed to the Respondent Reed or the Respondent Union in this case. If there was a labor dispute involved it certainly couldn't be attributed to us.

Trial Examiner Ward: I am going to sustain the objection. You may make an offer of proof if you wish, Mr. General Counsel. [80]

Mr. Law: Well I will offer to prove then that if this witness is permitted to answer it would be established where during the construction of this building there has been a strike of building construction employees that that strike has affected the entire construction project on the building. I am referring particularly to a strike of carpenters which—this is not part of an offer of evidence, this is part of an offer of proof which happened on Monday, which, I believe, would be shown had a definite effect on the construction during that day. That strike was short lived.

(Testimony of E. P. Wright.)

Trial Examiner Ward: The record will show the offer. The ruling will be the same.

\* \* \*

Cross-Examination

By Mr. Garoni:

Q. The approximate value of this entire job—do you have any idea of how much of this entire job is attributable to labor as distinguished from material? A. I have not.

Q. Do you have any idea what the total materials on this job, how much of those materials came across the State line?

A. No, I have not. [81]

\* \* \*

Mr. Garoni: If the Examiner please, I would like to call them out of order. I would like to call my witnesses out of order at the present time.

\* \* \*

JOE MURPHY,

a witness called by and on behalf of the Respondent Union, having been previously duly sworn, testified further as follows:

Direct Examination

By Mr. Garoni:

Q. Mr. Murphy, on June 14th you saw Mr. Charlton at the Stonestown Project?

A. I did.

(Testimony of Joe Murphy.)

Q. What was the first time after that date that you again saw Mr. Charlton? [86]

A. A week or so later.

Q. Where was that?

A. Up in the Hall in the office.

Q. Just exactly what occurred on that day?

A. He came in and asked for a blue card for Unemployment Insurance. We asked him if he wanted to go back on the job. He said no, he wanted a blue card. We signed the unemployment blue card which is required by the California State Employment Service, gave it to him and gave him another citation as well.

Q. By another citation, make that clearer. What was the citation about, please?

A. Refusal to get a clearance and go on the job.

Q. Did you definitely offer to let him go back on the Stonestown job if he so wished?

A. We asked him to go back on there, to give him a clearance.

\* \* \*

### Cross-Examination

By Mr. Law:

Q. Mr. Murphy, I understand that you say that a week after the lay-off or the termination of Mr. Charlton's employment by Mr. Reed he came to your office for a blue card?

A. That's right. Approximately a week.

Q. For what purpose was that blue card?

(Testimony of Joe Murphy.)

A. Unemployment Insurance, the California State Unemployment Insurance demands that the union members that are seeking work. [87] On the blue card there is a date when they signed up when they were unemployed and also a date when they are dispatched so that when they go back to the Unemployment to draw the Unemployment Insurance they won't give them Unemployment Insurance if they belong to the union unless they come to the union and show they are working or they are seeking employment.

Q. As I understand it you asked Mr. Charlton at that time if he wanted to go to work?

A. Correct.

Q. Did you have work to offer him?

A. Yes, we had work to offer him.

Q. Did any work which you had to offer him require clearance through your organization before he could go to work?

A. All of the hod carriers come in because of the simple reason that there is a number of contractors running wild around over this area and they have judgments against them for wages, material and everything else. In order to clear our members to see they get their money they come in to get a clearance or else they call up and tell us they are on a job. They come in and get a white card which gives them immediate clearance, or call up, or come in themselves.

Q. If they don't get this clearance from your organization, what do you do?

(Testimony of Joe Murphy.)

A. We cite them before the Executive Board to explain why they must have the clearance. [88]

Q. What else do you do?

A. First time it's a reprimand. So far, the vast majority, there hasn't been any of them that has been fined in relation to—they can rustle their own job with any of the contractors or master plasterers or master masons. For instance, one small contractor or a contractor's gang is winding up and he calls up, "Transfer my gang for a few days or weeks over to so and so because I haven't any work for them." They automatically transfer over, because we have a number of contractors as far as the Labor Commission and the State of California is concerned it's never been in such *undeploable* condition as at the present time.

Q. My question is, I will ask you directly, if the man fails or refuses to get a clearance through your union to keep his job as was the case of Mr. Charlton, do you go to the employer and attempt to get the man discharged?

A. As a rule we don't have to. The individual sees the membership voted themselves. In the War Manpower days voted themselves to get a clearance or to see that the employer they were working for had Workman's Compensation, Social Security; and a number of the contractors who had done business in the City and County of San Francisco had collected withholding tax and never turned it in and disappeared. Unemployment Insurance money from them disappeared; Social Security

(Testimony of Joe Murphy.)

from them disappeared. For their own protection they come in and [89] find out about these contractors.

Q. Well, right now I will ask you again. If the man fails or refuses to get clearance do you go to his employer and attempt to get the man discharged? A. No, we don't need to.

Trial Examiner Ward: Just a moment, Mr. Witness, when you have answered don't go into other matters. Quit when you have finished the answer and wait for a further question. We have a lot of long responsive answers for the last two or three answers.

The Witness: All right.

Q. (By Mr. Law): You got Mr. Charlton discharged because he did not get the proper clearance from your Union, did you not?

A. No, we didn't get him discharged.

Q. You got him laid off.

A. Charlton laid himself off because he refused to take the citation.

Q. Did you talk to the employer and ask him to lay Charlton off?

A. I told the foreman the hod carriers weren't going to work with this individual until he did get a clearance.

Q. You do that with any other person who refused to or failed to get a clearance after proper warning?

Mr. Garoni: I object to that. It's immaterial.

(Testimony of Joe Murphy.)

It is in relation to this particular man and not to any other person. [90]

Trial Examiner Ward: This is cross-examination.

Q. (By Mr. Law): Those were the employment conditions which applied to any other work which you might give to Mr. Charlton? Is that correct? A. That's true.

Mr. Law: Thank you. No other questions.

Q. (By Mr. Stanton): Do you have one of these white cards with you? A. Yes.

Q. I have here a small white card which has on its face "Hod Carriers Union No. 36, affiliated with S. F. Building Trades Council," a space opposite the name and town of San Francisco. What goes in that blank?

A. Which blank is that?

Q. The blank opposite San Francisco.

A. Date.

Q. The next blank has the word "name" in front of it. What goes in there?

A. Name of individual.

Q. The next blank has the word "company."

A. Name of the company he is working for; employed by.

Q. The next blank shows "location."

A. Where, approximately, the job is.

Q. The next blank has "Business Agent" under it and on this card has the name "Joseph A. Murphy" stamped in on it. [91] That is your name, is it not? A. That is correct.



(Testimony of Joe Murphy.)

Trial Examiner Ward: I suggest the card be marked for identification as Respondent Reed's Exhibit 1 if it might become material at the end of the hearing.

Mr. Stanton: I was going to say I wanted to know just what—I thought it was important to have in the record just what this white card was in its form.

Trial Examiner Ward: The card itself will be better in the record than the questions and answers. We will give it Respondent Reed's Exhibit No. 1.

Mr. Stanton: I would say this, Mr. Trial Examiner, I don't intend to offer it as an exhibit as part of our case.

Trial Examiner Ward: The Examiner may decide to put it under his exhibits.

Mr. Garoni: At this time I didn't intend to go into the extent of securing clearance, I intended to call Mr. Murphy later in our case about that. I didn't intend to go into, at this time, other facts. I intend to call Mr. Murphy later on our case. May I recall him then, sir? And if Mr. Murphy is present?

Trial Examiner Ward: You may reserve the right to recall him. [92]

\* \* \*

DILLY BELL,

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Trial Examiner Ward: What is your name?

A. Bell.

Direct Examination

By Mr. Law:

Q. What is your full name for the record, Mr. Bell?

A. First let me—I don't want to waste your time and mine too. I can't speak with authority, with any authority for the company for which I work. I am a sales representative, you [93] knew that. I am not an officer or an official or anything else.

Q. I will ask you certain questions.

A. My name is Dilly.

Q. You are not Mr. Bell?

A. Yes. My first name is Dilly.

Q. What is your position?

A. Sales representative.

Q. Of what firm?

A. Ceco Steel Products Corporation.

Q. What is your business address?

A. 401 Tunnel.

Q. That's in San Francisco? A. Right.

Q. Your firm handles steel windows, does it not?

A. Yes, sir.

Q. Steel window frames? A. Yes, sir.

Q. Did you, in 1949, sell certain steel window frames to the general contractor for installation on

(Testimony of Dilly Bell.)

the Stonestown Apartment House Project?

A. We furnished and sold some windows out. I don't know whether it was in 1949 or not. I happen to work in another department of our company.

Q. I will ask you—

Mr. Garoni: If the Trial Examiner please, I don't mean [94] to interrupt, but may I ask for a continuing objection to this type of testimony?

Trial Examiner Ward: You have, throughout the entire hearing.

Q. (By Mr. Law): Where are your steel window frames manufactured

A. In Chicago.

Q. Chicago, Illinois?

A. Yes.

Q. Are any of them manufactured in California?

A. Yes, but I don't know whether any of the Stonestown windows were manufactured in California. We do manufacture some special windows in California.

Q. Where do you manufacture them?

A. We might put together a few or manufacture a few in San Francisco, but our main manufacturing plant is in Chicago. We might manufacture a few in Los Angeles, too.

Q. Are those largely on special orders?

A. Very special.

Q. In what proportion of your total product consists of the special orders manufactured in California?

A. Minute. One-half of one per cent, maybe, or practically none in percentages.

(Testimony of Dilly Bell.)

Q. Where do you obtain the steel for the windows which you manufacture in California? [95]

A. I don't know. My answer would only be a guess. I am not familiar with those details.

Q. Do you also handle steel forms for the erection of concrete structures? A. Yes.

Q. By "you" I refer to the firm. A. Yes.

Q. Where are those forms manufactured?

A. I don't know for sure.

Q. Are they manufactured in California?

A. I don't know that for sure. I couldn't state.

\* \* \*

Trial Examiner Ward: How long have you worked for your present employer?

A. About six years. [96]

\* \* \*

HARRY GIBBS,

a witness called by and on behalf of the Respondent Union, being first duly sworn, was examined and testified as follows:

Trial Examiner Ward: What is your name?

A. Gibbs, Harry.

Direct Examination

By Mr. Garoni:

Q. Is that G-i-b-b-s? A. Yes.

Q. Where do you live, please?

A. 462 Morse Street, San Francisco.

Q. Are you a member of the Hod Carriers Local No. 36? A. Yes, sir, I am.

(Testimony of Harry Gibbs.)

Q. What position do you occupy?

A. President.

Q. How long have you been president?

A. Eight years or better.

Q. How long have you been a member of that local?

A. I have been a member since 1926.

Q. Do you know Mr. Charlton, the Charlton party in this case?      A. I do.

Q. Do you recognize Mr. Charlton in the [97] room?      A. I do.

Q. Will you point him out, please?

A. He's back there, sir; right back there. Way back in the last seat.

Q. Thank you. On or about June 14, 1950—1949, excuse me, did you accompany Mr. Joe Murphy out to the Stonestown tract?      A. I did.

Q. Did you see Mr. Murphy engaged in conversation with Mr. Charlton?      A. Yes, I did.

Q. Were you able to hear any of the conversation?

A. No, I was in the car. Brother Romo passed away, he was with Brother Murphy.

Q. After that date of June 14, 1949, do you recall seeing Mr. Charlton again?

A. Yes, he come up in the office.

Q. About how long?

A. A week or so after.

Q. What occurred? In your own words, will you please tell?

(Testimony of Harry Gibbs.)

A. He came up there and asked for unemployment card, which Brother Murphy gives unemployment cards out, the blue cards.

Q. Who did he ask for the employment card?

A. For himself.

Q. I mean what person did he ask for?

A. Joe Murphy. [98]

Q. What did Mr. Murphy say, if anything, to him?

A. Brother Murphy said to him like this, "Don't you want—you want an employment card. What do you want with an employment card?" He said, "There's a job that you can go back on."

Q. What did Mr. Charlton say, if anything?

A. He said he'd think it over. So when he took—Murphy signed the card. Before he went away Murphy gave him another citation to appear before our Board.

Q. The citation was for what purpose?

A. Well, for the rules we have you know, he didn't live up to the rules of the organization and along with that—we cited him before our Executive Board.

Mr. Garoni: I have no further questions.

#### Cross-Examination

By Mr. Law:

Q. You testified that Mr. Murphy told Charlton he could go back on that job?

A. That's right.

(Testimony of Harry Gibbs.)

Q. Did he say what job?

A. Larry didn't say. I guess it was the job that he came off of. It was the job he came off of, I guess. That was the job he was referring to.

Q. You say Murphy told Charlton he could go back on the job that he had just gotten Mr. Charlton laid off from?

A. That's right. I couldn't say—the thing is I couldn't hear what was happening between him and Murphy on the job [99] but this was in the office. Murphy asked him.

Q. You heard everything they said there?

A. Yes.

Q. According to the rules of your organization could Mr. Charlton go back on the job without first clearing himself through your organization? In other words, were you prepared to forget the entire matter?

A. Yes. The whole thing is the man—if it is a misunderstanding he can go back. We don't hold nothing against a member for small causes and the like of that.

Q. It is your testimony that you and Mr. Murphy were prepared to forget all about the matter and waive the rules and let Mr. Charlton go back?

A. We don't waive no rules. The whole thing is we live up to our rules. We have our rules from our International organization and we make our own locals, but we handle the rules so as Brother Murphy said in which we have always protected this way, the employer too, there are so many em-

(Testimony of Harry Gibbs.)

ployers that have no Social Security, has no—they have bad ratings for checking—that's why we would have a clearance to protect our members that way.

Q. You testified before Mr. Charlton left Mr. Murphy gave him another citation?

A. That's right.

Q. Did Mr. Murphy say why he did that? [100]

A. Well, he didn't come up to—he didn't want to take the job so what is he going to do? He offered him a job. He didn't come in before, he didn't come before the organization. There is a man that's been in our organization I don't know how many—in my time, eight years I haven't seen him twice in the organization.

Q. He got this citation for being an unsatisfactory member, is that right?

A. No, for going by on the job. We didn't know where he was. We happened to run across him. He had been on a different job. We generally put the permits, you know, that they give out to a member to protect himself, as I said. A man that's contracting around, he's got no license; got no money; he gives you a bum check. There's been so many rubber checks.

Trial Examiner Ward: Just a minute, we can ask questions. Read the last question, please.

(Question read.)

A. He told him to appear before the Board.

Q. (By Mr. Law): Let me ask you this: In



(Testimony of Harry Gibbs.)

coming in to obtain this card for Unemployment Insurance had Mr. Charlton properly and adequately cleared with your organization for further employment on the Stonestown project?

A. Well, I couldn't say. The whole thing is he had been working out there. He asked him if he wanted to go back. I guess he was cleared then. [101]

Mr. Law: No other questions.

Q. (By Mr. Stanton): Mr. Gibbs, you said that Mr. Charlton had been a member of your organization for eight years, is that right?

A. I didn't. He'd been a member a good many years. I have been president for eight years.

Q. Do you know if he has been a member of the Union for that period?      A. Yes.

Q. Is Mr. Charlton still a member of your Union?      A. He is.

Q. In other words he has not been expelled, his membership has not been terminated, is that correct?      A. No. [102]

\* \* \*

Q. (By Mr. Stanton): Is there any reason why this white card would not have been issued to Mr. Charlton upon request at this meeting in the Union office a week after June 14th?

A. Which white card is that?

Q. The white card which is identified as Respondent Reed's Exhibit 1 for Identification.

A. You mean the one that clears the job?

(Testimony of Harry Gibbs.)

Q. I have in my hand a white card which has previously been identified for the record as Respondent Reed's Exhibit No. 1.

Trial Examiner Ward: For identification. [103]

Q. (By Mr. Stanton): For identification.

A. We always give a man a card like that that goes out on a job. Once you give him that card, that brother card like that on a job, that's good, if he quits or wants to go back again he can go on that same card.

Q. The question I have asked you, Mr. Gibbs, is was there any reason why such a card would not have been issued to Mr. Charlton at this meeting in the Union office a week after June 14th?

A. No.

Q. Was Mr. Charlton so informed?

A. Mr. Charlton was informed, yes.

Q. That he could have one of these cards for the asking for Mr. Reed's job, is that correct? [104]

\* \* \*

Q. (By Mr. Stanton): This is a form, referring now to Respondent Reed's Exhibit No. 1 for identification, this is a card issued by the Union, is that right? A. That's right.

Q. Was there any reason, insofar as Mr. Reed is concerned, why the Union would not issue such a card to any man who had been employed by Mr. Reed? [105]

A. That's right. I'd give him a card.

Q. Was the Union satisfied that Mr. Reed was

(Testimony of Harry Gibbs.)

paying the hod carriers working for him?

A. What do you mean, the scale wages?

Q. I mean promptly and without hold back. You have testified, Mr. Gibbs, that the purpose of these cards is to protect hod carriers against contractors who do not pay their labor bills, is that correct?

A. In one way, yes.

Q. My question is whether Mr. Reed was considered by the Union as a contractor who did not pay his labor bills promptly?

A. Oh no, no, no. I wouldn't say to that. He has been a very, very good contractor. [106]

\* \* \*

### Redirect Examination

By Mr. Garoni:

\* \* \*

Q. At this meeting in the office about a week later from June 14, 1949, was there any discussion at all pertaining to a clearance card?

A. No.

Q. Mr. Murphy just offered him a job?

A. How it came about he came up for his Social Security so we asked him if he wanted to go back to work again. He said he wanted his Social Security. He said he'd think it over. That's when we asked if he wanted to go back to work.

Q. You mean Social Security or Unemployment Insurance?

A. Unemployment, yes, sir, pardon me. Unemployment Insurance.

\* \* \*

(Testimony of Harry Gibbs.)

Recross-Examination

By Mr. Stanton:

Q. Has the Union received any resignation from Mr. Charlton as a member of the Union?

A. No, sir.

Q. Either verbal or in writing?

A. No, sir. [107]

Trial Examiner Ward: Anything further of this witness?

A. (By Mr. Law): Who determines whether a man is entitled to a clearance for a job, Mr. Gibbs, do you or Mr. Murphy?

A. Mr. Murphy is the representative. He polices the outside, all the jobs.

Q. Is that one of Mr. Murphy's duties as a business agent of Local No. 36? A. Yes.

Q. To contact all jobs? A. Yes, sir.

Q. Where a man does not have a clearance is it part of Mr. Murphy's job to see that he gets a clearance if he stays on the job?

A. Well, the whole thing is that maybe the man has got a clearance a year or six months before. If he's still on that job he don't need another clearance.

Q. Is it part of Mr. Murphy's job to see that he gets a clearance if he stays on the job?

A. Yes, that's what he's got the clearances for. [108]

\* \* \*

ALFRED LEVI

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Law:

Q. What is your name?

A. Alfred F. Levi.

Q. What is your business address, Mr. Levi?

A. 301 Mission Street.

Q. What is your position?

A. Salesman with W. P. Fuller and Company.

Q. As a salesman for W. P. Fuller and Company do you sell glass?

A. We sell glass, estimate glass from the plant and sell the glass and through the Fuller arrangement here in San Francisco we supervise the job until it is completed.

Q. Are you familiar with, or do you know of the Stonestown Apartment House Project in San Francisco?

A. Yes, I do.

Q. Did you have any connection with that work out there?

A. Yes, we furnished all the glass out there. Furnished and installed all the glass, I might say.

Q. Did you personally have anything to do with that?

A. Yes, I supervised the job.

Q. You supervised the installation of the glass?

A. Installation, yes. [110]

Q. All right. Did W. P. Fuller and Company supply the glass?

(Testimony of Alfred Levi.)

A. Yes, they had the contract to supply and install the glass.

Q. Now where did you obtain the glass which was installed at the Stonestown Apartment house project?

A. The window glass was supplied by the Pittsburgh Plate Glass Company from their plant in Henrietta, Oklahoma. The crystal glass, the heavy window glass, came from Clarksburg, West Virginia and there was some obscure glass supplied by Mississippi Glass Company, very likely from the St. Louis plant and a little plish wire glass supplied by Mississippi from their Fullerton plant.

Q. You say the St. Louis plant, where is the St. Louis plant?

A. It's a little town outside of St. Louis, Missouri.

Q. You mentioned the same company's Fullerton plant. Where is Fullerton?

A. That's in California.

Q. Approximately—have you now testified about all the glass supplied for the job?

A. That's all the glass in the job, yes, sir.

Q. Approximately what is the value of the glass supplied by the Fullerton, California, plant you mentioned?

A. I'd say, not having the figures with me, around \$2,000.

Q. Approximately what is the value of all the other glass which you have mentioned?

(Testimony of Alfred Levi.)

A. In round figures around \$48,000. [111]

Mr. Law: No other questions.

Trial Examiner Ward: The Union?

Cross-Examination

By Mr. Garoni:

Q. As of June 14, 1949, do you know of your own personal knowledge whether the glass for the Stonestown project was in the State of California at that time or not? A. Not all.

Q. How much would you say was in at that time?

A. That's hard to say without my looking at the records. You see, the way we do, we took that glass out of our stock as it was required and slowly brought it in as we required it.

Q. Was the glass here in storage in the State of California for this job at that time?

A. That's about a year ago. I'd say fifty per cent of it was.

\* \* \*

Q. Was that glass shipped direct to the job?

A. No. All glass from any of our supplies goes to our warehouse first. [112]

\* \* \*

(Witness excused.)

## BRUNO LAURIE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

\* \* \*

## Direct Examination

By Mr. Law:

Q. What is your position?

A. Assistant construction manager.

Q. For what company?

A. Otis Elevator Company.

Q. For how long have you held that position?

A. About three years now.

Q. Do you know of the Stonestown apartment house project in San Francisco?

A. Yes, sir, I do.

Q. Did the Otis Elevator Company supply certain elevators for that project?

A. Yes, we did.

Q. Elevators and related equipment? [113]

A. That's right.

Q. Where were those elevators manufactured?

A. We have plants at Yonkers, New York, and Harrison, New Jersey.

Q. Were the elevators manufactured at one or both of those two plants?

A. Well, the machine room equipment and the control equipment, it all is manufactured at the Yonkers, New York, plant. The cars, platforms and counterweights and so forth are all made at our Harrison, New Jersey, plant.



(Testimony of Bruno Laurie.)

Q. Mr. Laurie, one other question. Are you, or do you know of the Standard Oil Building annex on Bush Street? A. Yes, sir.

Q. Did your firm supply the elevators for that building? A. We did.

Q. How many elevators have you installed in that building?

A. Six elevators altogether in the adjoining.

Q. That is the building now under construction?

A. Yes. Six of them altogether.

Q. Mr. Laurie, I am not asking for any confidential figures, but what is the approximate value of the elevators and related equipment installed by your firm in the Standard Oil Building?

A. I don't think I could answer that because I don't even know, being in the construction end of it we are interested in one thing only, that is getting them in, and I don't even pay any attention to the figures. [114]

Q. Did these elevators, the six elevators being installed or are installed in the Standard Oil Building, also originate in New York and New Jersey?

A. That's right. The division is always identical in every job. We only have these two plants and they make all of the equipment.

Q. How many elevators did you install at the Stonestown project? A. Eight.

\* \* \*

(Testimony of Bruno Laurie.)

Cross-Examination

By Mr. Garoni:

\* \* \*

Q. Where did you get your information as to how many elevators were installed out there and all this information that you gave on direct examination?

A. Well, all contracts referring to installation go through my hands.

Q. You personally see these contracts?

A. I don't see them always, no, but I see all the abstracts of contracts which indicate the numbers and the types of equipment. [115]

Q. Did you see the contract with relation to the Stonestown job personally?      A. Yes, I did.

Q. Did you see the contract in relation to the Standard Oil job, personally?      A. Yes.

Q. Did you read the contract?

A. No, I didn't read it.

Q. Did you read the Stonestown contract?

A. I did not.

Q. How did you get this information then about—

A. Well, I am only interested in one thing as far as the contract is concerned, that is the number of elevators and the types. Those are the things that I pick out relative to completion and has to be ready dates.

Q. In a great many occasions that is merely

(Testimony of Bruno Laurie.)

told to you verbally by someone else, isn't that right?

A. Sometimes it is told verbally, but usually I check them over.

Q. You could have been told verbally on Stonestown project which was being done there, isn't that right?

A. Well, I don't think so. I think I knew it from the actual contract. [116]

\* \* \*

Q. Do you know where the particular elevators in the Stonestown project came from, your personal knowledge?

A. Would you repeat the question?

Q. Do you know where the elevators in the Stonestown project came from?

A. Yes, sir, I do.

Q. Is that from your personal knowledge, not being told, or do you know?

A. I know actually they came from Yonkers and Harrison.

Q. What type of elevators were the Stonestown project?

A. They were button control elevators.

Q. I had reference to passenger or freight.

A. Passenger elevators.

Q. What capacity elevators? [117]

A. Offhand I couldn't answer that.

Q. You don't know? A. I don't know.

Q. Were you out on the Stonestown project?

A. Yes, I have been out there.

(Testimony of Bruno Laurie.)

Q. Don't know what type of elevators are out there?

A. Well, when we talk about capacity you might say 2,000 or 2,500.

Q. I mean in relation to persons, how many persons can ride the elevator?

A. I don't know offhand.

\* \* \*

Q. How many elevators—in what buildings were these elevators installed out at the Stonestown project, were they installed in all the buildings, in other words?

A. To my knowledge they were installed in all the buildings, in the high riding buildings.

Q. I beg your pardon?

A. In my knowledge they were installed in all the high rise buildings.

Q. How many high rise buildings are there?

A. There is eight that I know of. [118]

Q. On the Stonestown project eight high rising buildings?

A. Pardon me, four, eight elevators.

Q. Eight elevators but four high rise buildings, is that what you are trying to say?

A. Yes. [119]

\* \* \*

DONALD WHITTEMORE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Law:

Q. What is your name?

A. Donald Whittemore.

Q. What is your business address?

A. 333 Montgomery Street.

Q. What is your position?

A. Office Manager for J. H. Pomeroy and Company, Inc., general contractors, wholesale lumber distributors.

Q. For how long have you held that position?

A. For the past nine years.

Q. Do you know of the Stonestown apartment house project in San Francisco? [120]

A. Yes, I do. We supplied them some lumber.

Q. Approximately how much lumber in dollar value did your firm sell for the Stonestown development?

A. Very close to \$300,000.

Q. Do you know where that lumber came from?

A. Yes, it came from mills in southern Oregon and northern California and right on the border.

Q. Approximately how much of the lumber came from Oregon and how much came from California?

A. Well, we would figure about 60 per cent from Oregon and about 40 from California. It is impossible to tell with any degree of accuracy because many of the mills lie both in California and in

(Testimony of Donald Whittemore.)

Oregon, but we have always thought it was about 60-40 split.

\* \* \*

### Cross-Examination

By Mr. Garoni: [121]

\* \* \*

Q. How do you know that 60 or 40 per cent, upon what do you base your judgment?

A. Well, about 60 per cent of the lumber comes from the mills in Oregon and about 40 per cent from the mills in California. It is very hard to determine the actual percentage because it comes from around the Grants Pass area which is southern Oregon. As I previously said some of the logging operations are in both states. They don't put a birth certificate on each log and say this is Oregon and this is California.

Q. You say generally the lumber that comes to your firm 60 per cent comes from Oregon and 40 per cent from California, of all the lumber supplied to you, is that right?

A. For this particular project. This was a special cutting. We had to get it from several different mills. One mill couldn't supply it all at the time.

Q. I was interested in knowing you arrived at those percentages. By what means, is it merely conjecture?

A. No, we took the invoices to the mills that lie in California and the invoices to the mills that lie in Oregon and that added up to about 60-40.

(Testimony of Donald Whittemore.)

Q. Did you specially handle these invoices yourself? [122]           A. Yes.

Q. Do you know what the lumber was used out at the project for?           A. I haven't any idea.

Q. You do know the project is not a substantially lumber project though?           A. Yes.

Q. Was the type of lumber sent out there lumber used for forms and so on, concrete forms?

A. Rough lumber; I don't know what they used it for.

Q. From your general experience in the use of lumber for concrete forms, that lumber is also used in other jobs as well as the one particular job?

A. All construction jobs use it. [123]

\* \* \*

Q. (By Mr. Garoni): On the date of June 14, 1949, do you know how much lumber had already been delivered out at the project?

A. I haven't any idea.           ..

Q. Was a good portion of it delivered, can you estimate approximately?

A. I would say all of it or practically, that's just—

Q. Delivered by June 14th?

A. Nothing definite on that at all. It is not a fair question.

Mr. Garoni: No further questions.

Trial Examiner Ward: Some of the lumber cut in northern California processes in mills in Oregon?

A. Right. [124]

\* \* \*

## EDWARD H. KRUSE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Law:

Q. What is your business address?

A. 6247 College Avenue, Oakland.

Q. What is your position, your business or occupation?

A. Trustee for the L. J. Kruse Company, plumbing and heating contractors.

Q. For how long have you held that position?

A. 1946.

Q. Do you know of the Stonestown apartment project in San Francisco?           A. Yes, I do.

Q. Did your firm, as a subcontractor, supply certain heating and plumbing equipment for that project?           A. We did.

Q. Approximately what is the value of the heating and plumbing equipment you supplied?

A. The contract price for the project was in the neighborhood of about \$780,000.

Q. Would you list or state briefly the general type of equipment which you did supply under this contract?

A. We did all the plumbing and heating work in the unit, in the project, which would consist of all the sanitary facilities in the building, plumbing-wise, and all the boilers, [125] all the heaters and



(Testimony of Edward H. Kruse.)

heating equipment and everything that goes into making the heating system in a project of that type.

Q. Do you know where the plumbing and heating equipment that your firm provided for the Stonestown apartment development was manufactured?

A. I know where the greatest amount of it was.

Q. Was some of it manufactured in California?

A. Yes.

Q. Was some of it manufactured outside of California?      A. Yes.

Q. What proportion of the total equipment was manufactured outside California?

A. Roughly of the total contract price I would say 60 to 70 per cent was from out of State, dollar-wise, that is. The rest was from within the State.

Q. The rest was from within the State?

A. Probably so.

Q. Did your contract price include certain labor costs as well as the equipment cost?      A. Yes.

Q. What proportion of the total contract price would comprise labor costs?

A. Roughly 25 to 20 per cent, maybe 35 per cent.

Q. The rest would represent the material costs?

A. That's right. [126]

Q. What other States of the United States other than California was some of your material manufactured in, could you enumerate some of the items and tell us?

A. Cast iron soil pipe and fittings, mostly from Alabama. Steel pipe from Bethlehem Steel Corpo-

(Testimony of Edward H. Kruse.)

ration, I think it is from the east coast, Pennsylvania, I am not sure on that. A lot of the heating equipment from the boilers for instance came from Kewanee, Illinois. The heating units came from La Crosse, Wisconsin. All the plumbing ware, the fixtures, came from Detroit, Michigan. Some more from Chicago, Illinois, it's spread around quite a bit.

Mr. Law: Thank you, Mr. Kruse, I have no other questions.

Trial Examiner Ward: The Union may examine.

### Cross-Examination

By Mr. Garoni:

Q. Do you know offhand how much material was to the job or within the State of California on June 14, 1949, approximately a year ago?

Mr. Malatratt: Or prior to that date?

A. Roughly about 50 per cent or in excess of 50 per cent.

Q. (By Mr. Garoni): Was the other 50 per cent that wasn't delivered to the job, was that in storage in California at that time?

A. Pardon me?

Q. Was the other 50 per cent not delivered to the job in storage in California before that date of June 14, 1949? [127]

A. Most of it was still out of the State.

Q. What was the type of plumbing work that you had to do particularly out there?

A. What type of plumbing work?

Q. Yes.

(Testimony of Edward H. Kruse.)

A. Plumbing work in the buildings, sanitation, installation of the fixtures, normal plumbing fixtures that you see every day in the week.

Q. Installation of pipes throughout all the big four main buildings?

A. All the waste pipes, all the water supply piping.

Q. How do you arrive at your figures that 60 to 70 per cent of this came from out of the State?

A. Well, I figured the job, I was on the job all the time, I signed the checks, I naturally have access to all of the invoices and in fact I would have a pretty good idea of what it amounts to.

Q. Did you ever sit down and try to figure out how much percentage each was one way or the other or are you just making up a wild guess?

A. Percentage in what manner?

Q. 60 to 70 per cent coming from out of the State?

A. Yes, I figured it out.

Q. Just about when did you do that?

A. About an hour ago. [128]

Q. Before you came here?

A. That is right.

Q. Did you know you were going to be questioned on this before you came here on these figures?

A. No.

Q. Why did you try to figure this out, how did you know what you were going to be questioned on?

A. I didn't.

Q. For what reason did you sit down and figure these percentages out then?

A. I went over the entire setup.

(Testimony of Edward H. Kruse.)

Q. What prompted you to do that?

A. Mr. Stewart of the development corporation said there would be a hearing here relative to contract prices and materials that went into the job.

Q. Did they tell you you would be questioned as to how much came from out of the State and all that?

A. Probably did somewhat.

Q. You are not sure now?

A. I didn't talk to Mr. Stewart. [129]

\* \* \*

### GEORGE W. REED

a witness called by and on behalf of the Respondent employer, having been previously duly sworn, was examined and testified further as follows:

#### Direct Examination

By Mr. Stanton:

Q. Mr. Reed, when did you first employ Mr. Charlton?

A. You are asking a question that goes way back. He worked for me about thirty years ago when I first employed him.

Q. When was the last time he was employed by you immediately prior to his last employment with you?

A. It was a week or ten days as far as I can remember before the incident at the Stonestown contract.

Q. Would you repeat that answer?

(Answer read.)

(Testimony of George W. Reed.)

Q. (By Mr. Stanton): I was referring to the employment prior to the last employment. [133]

A. I don't think Mr. Charlton worked for me in the interval between thirty years ago and up until just before this incident occurred.

\* \* \*

Q. Under what circumstances did Mr. Charlton come to you in May of 1949?

A. Mr. Charlton was working for Harry E. Drake Company and Mr. Drake was low on work so he asked me if I could use Mr. Charlton and a bricklayer and an apprentice. I told him yes I can use them. He sent them to me and he was put to work, he was sent to my superintendent.

Q. What was the name of the apprentice that came with Mr. Charlton?

A. His name was Kettleman.

Q. What was the name of the bricklayer?

A. Green.

Q. When did Mr. Kettleman and Mr. Green leave your employ?

A. They left my employ to go back to Harry Drake Company [134] on or about June 21st, I believe.

Q. In what year?           A. 1949.

Q. Was that at the request of Mr. Drake?

A. As far as I know, yes. It didn't come through me.

Q. You do know they did go to work for Mr. Drake, is that correct, Mr. Kettleman and Mr. Green?           A. That is right.

(Testimony of George W. Reed.)

Q. On or about June 21, 1949?

A. That's right.

\* \* \*

Q. Mr. Reed, did Mr. Charlton have—let me put this question. How many employees do you have who have been with you more than a year at the present time? [135]

A. I should say fifteen.

Q. When your requirements go below fifteen on what basis do you arrange your layoffs?

A. Well, I usually get a hold of some of my competitors and ask them if they want to take some of my men for a while.

Q. Whom do you select. On what basis do you select your men for layoff?

A. Usually on the basis of length of time they have been with me. The ones who have been with me the longest stay with me as the work decreases, which is natural.

Q. Referring to the incident that took place on June 14, 1949, can you tell the Trial Examiner what the effect of the removal of the four hod carriers other than Mr. Charlton from the job would have been on the project that you were engaged in?

Mr. Law: Object to the question. It is speculative. I think if there are facts which can be shown on this point I think it is entirely admissible. But—

Trial Examiner Ward: Objection will be overruled. The record shows the Witness is a contractor

(Testimony of George W. Reed.)

of long experience and we can treat him as being qualified to answer the question. He may answer.

A. Will you put that question again?

Mr. Stanton: Read it please.

(Question read.)

A. My business is strictly a subcontracting business. I [136] take a subcontract and I am responsible to go to the owner, the architect and the general contractor from whom I take the subcontract to perform the work. We also make and have a three months' negotiated wage agreement which gives us our scale of wages to be paid to the different trades. Therefore, if the four other men had been removed from the job it would have caused me to fall down on the performance of my obligation to the owner. It is simply a case of—when a man comes on a job we do not ask if he belongs to the Adventist Church or what lodge he belongs to or what Union, in fact, he belongs to. If he has a grievance with a Seventh Day Adventist church member on the job and they will refuse to work, I naturally am going to take the weak link out of the chain and straighten my job out. In this case there was a weak link and it had to be straightened out and in this present case the man was told he could come back to work as soon as he had straightened the weak link out; straightened himself out. Otherwise my job would have been tied up and the performance of my contract would have been imperiled.

(Testimony of George W. Reed.)

Cross-Examination

By Mr. Garoni: [137]

\* \* \*

Q. What was your understanding with Mr. Drake as to how long these men, including Mr. Charlton, were to be with you?

A. The understanding was that most of the men can call them at any time. It may have been a day, it may have been two days, it may have been a week or two weeks until he called for his men.

Q. These men, so far as you were concerned, were they permanent employees or temporary to you, including Mr. Charlton?

A. Temporary.

Q. For what period of time?

A. Until Mr. Drake called them back.

Q. Do the hod carriers have to be particularly skilled in their business in any way?

A. They do.

Q. In what way. Would you describe, please. Give some instances. [138]

A. Well, they have to be skilled in their tempering of mortar, building of safe scaffolds and even in the wheeling of a wheel barrow full of bricks.

Q. Do you have any other source other than the Union to obtain these skilled men in San Francisco? A. In the locality, no.

Q. As a matter of fact you just have to go to the Union when you want those men?

A. That's right. [139]

\* \* \*



(Testimony of George W. Reed.)

Q. When was the Stonestown job finished, Mr. Reed, that is your part of it?

A. Oh, the early part of this year, January or February of this year.

Q. And did you have certain of your hod carriers employed on the job until January or February of this year?

A. On and off. There was a lot of extra work that came up on the job after the major contract was finished. Putting in small retaining walls and curbs that made the job string out a lot longer than it ordinarily would have gone.

Q. When did your job at the Standard Oil Building start?

A. As close as I can remember, August of 1949.

Q. Did certain of your hod carriers who had worked on the Stonestown project transfer to the Standard Oil project?

A. They were transferred by the superintendent at the Standard Oil Company project, yes.

Q. I will ask you about certain individual names: Did you have employees as hod carriers at Stonestown whose names were as follows: J. Hunter.

A. Right.

Q. R. Miers? A. Right.

Q. A. Sweeney? [140] A. Right.

Q. J. Sylvester? A. Right.

Q. P. Peterson? A. Right.

Q. Henry Kroll? A. Right.

Q. I will ask you if these individuals were trans-

(Testimony of George W. Reed.)

ferred by you, continued in your employ, on into the work at the Standard Oil Building?

A. They all did to my recollection except Henry Kroll.

Q. Were there any other hod carriers transferred to the Standard Oil Building?

A. Not that I remember.

Q. You testified that at the present time you employ fewer hod carriers than you did a year ago. Have you at all times since a year ago employed fewer hod carriers than you did a year ago?

A. No. It would fluctuate. Sometimes we may have fifteen hod carriers, and another time twenty and then it will drop down to ten or maybe it might be five, maybe.

Q. So that during the past year sometimes you have had more hod carriers than you did on June 14th of 1949, and sometimes fewer?

A. That's right. [141]

Q. As of right now it happens that you have fewer?      A. Yes.

Q. When was the Standard Oil, or is the Standard Oil project completed, your part of it?

A. No, I still have men working on the Standard Oil.

Q. How many hod carriers do you still have on Standard Oil?      A. Two hod carriers.

\* \* \*

(Testimony of George W. Reed.)

Redirect Examination

By Mr. Stanton:

Q. How long has Gene Hunter been in your employ?

A. Ever since I have been operating as an individual and maybe five or six years prior to that.

Q. In other words five or six years prior to 1942, is that correct?      A. Right.

Q. How long has R. Miers been in your employ?

A. Approximately the same length of time.

Q. How long has A. Sweeney been in your employ?      A. About the same.

Q. How long has P. Peterson been in your employ?      A. Approximately three years. [142]

Q. As of the present time?      A. Yes, sir.

Q. How long has Sylvester been in your employ?

A. The last twenty-five years—I am getting old.

Q. How long has Henry Kroll been in your employ?

A. Henry Kroll does not work steady for me. He is on and off. He likes to work for me a while then he gets sore at me and quits and then he comes back again. He is on and off all the time.

Q. For any extended period of years has he been on and off with you?

A. No, just when he feels like it. But if he feels like working for me again he comes back and gets a job.

(Testimony of George W. Reed.)

Q. He was not transferred from Stonestown to the Standard Oil Building, is that correct?

A. I believe he left Stonestown of his own accord before Standard Oil started.

Q. Did Mr. Charlton ever speak to you about putting him back to work after June 14, 1949?

A. Never did.

\* \* \*

### Recross-Examination

By Mr. Garoni: [143]

\* \* \*

Q. So, what you do know, was anyone actually taken off of that job, did any of your men lose their employ outside of Mr. Charlton, or quit your employ, that is?

A. No, not according to their pay checks. They all received full checks so they must have worked.

Q. Every man continued working so the job was not stopped? A. That is right.

Q. Was any other job affected upon that date?

A. No other job.

Q. Do you know how Mr. Green or Mr. Kettleman came to leave you on June 21, 1949?

A. It is the policy of Harry Drake to call the men up in the evening and tell them he wants them the day after tomorrow or something like that and they simply notify my foreman that Harry called them and they go back to work for Harry. [144]

\* \* \*

Mr. Law: Mr. Examiner, we have been off the

record in an effort to arrive at some stipulation which would shorten the duration of this case and obviate the necessity of calling another witness or other witnesses, which would at the same time allow each party to preserve his record as to certain factual points while also making a record upon which you or the Board can make findings of fact. With those thoughts in mind, and as a result of the conversations which we have had [146] mutually and the conversations which each of us has also had with a Mr. Wescott, the manager of the San Francisco branch of Barker Brothers, whose main office is at 711 South Fowler, Los Angeles, I propose the following stipulation.

In lieu of the taking of further testimony:

First that if Mr. Wescott, the manager of the San Francisco branch of Barker Brothers were called here to testify he would testify that the figure of \$342,574.88 appearing as the value of Barker Brothers subcontract on General Counsel's Exhibit No. 2, represents Barker Brothers' price, Stonestown Development Corporation, but not necessarily the cost to Barker Brothers of stoves, refrigerators, cabinets and possibly certain sink attachments installed in the apartments at Stonestown apartment project, and that all of the stoves, refrigerators and cabinets were manufactured outside of the State of California.

I propose the further stipulation that Mr. Wescott would testify that he has not personally supervised the purchasing or the installation of the appliances I have mentioned at the Stonestown apartment project but that he has gained his knowledge

about which I propose the stipulation in his capacity as manager of the San Francisco branch of Barker Brothers.

I propose that stipulation which I hope I have correctly stated.

Mr. Stanton: The employer will so stipulate.

Mr. Garoni: May we go off the record just a moment, please? [147]

Trial Examiner Ward: Off the record.

(Discussion off the record.)

Trial Examiner Ward: On the record.

Mr. Garoni: Mr. Trial Examiner, the Union stipulated to that with the modification and additions that in this instance it does not represent the cost to Barker Brothers, we meant to say that does not represent the out of State cost of these appliances to Barker Brothers, and further that Mr. Wescott, if on the stand would testify that he does not know how many of these appliances were delivered to the job, Stonestown job as of June 14, 1949, nor does Mr. Wescott know how much or how many of these appliances were in storage in the State of California as of June 14, 1949, but he does know that some were delivered and some were in storage but the quantity he does not.

Mr. Law: I will join in the stipulation with the additions and modifications mentioned by Mr. Garoni.

Trial Examiner Ward: Is that acceptable to all parties as modified by the Union?

Mr. Stanton: The Respondent employer joins with the modifications, too.

Mr. Law: Yes.

Mr. Stanton: Yes.

Mr. Garoni: Yes.

Trial Examiner Ward: The record will so show that the [148] stipulation is accepted as agreed by Counsel.

\* \* \*

Mr. Garoni: I am eliminating one thing. I am sorry this has to be brought up again. I did want to state that the Union does not stipulate as to the truth of these facts but Mr. Westcott would so testify.

Trial Examiner Ward: If he was called as a witness he would so testify, that is what the stipulation provides.

Mr. Garoni: Thank you. [149]

\* \* \*

### HARRY E. DRAKE

a witness called by and on behalf of the Respondent Reed, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Stanton:

Q. What is your name?

A. Harry E. Drake.

Q. What is your business address, Mr. Drake?

A. 666 Mission Street.

Q. What is your business?

(Testimony of Harry E. Drake.)

A. Masonry contractor.

Q. Do you know Ernest Sydney Charlton, who is the complaining party in this proceeding?

A. Yes, sir.

Q. Has he ever worked for you?

A. Yes, sir.

Q. During what periods has he worked for you?

A. He has worked off and on for forty years.

Q. Did he work for you during 1948?

A. Yes.

Q. For how long a period? [150]

A. I brought a time book along to see. I haven't '48 here but he worked, I think, the greater part of 1948 for me.

Q. Did he work for you any part of 1949?

A. Yes.

Q. What part?

A. Well, the week ending January 6th on a Thursday, that's the earliest I have. That brings us back to about the first of January, 1949.

Q. Did he work continuously from then on until May of 1949?

A. Yes. I think until the 11th of May, according to the time book.

Q. Under what circumstances did he leave your employ at that time?

A. I sent he and two bricklayers to George Reed's job.

Q. What were the names of the bricklayers?

A. W. Kettleman and Raymond Green.

Q. When you say you sent these men to George



(Testimony of Harry E. Drake.)

Reed's job did you have any conversations with them concerning that transfer?

A. I judge I did. Reed needed bricklayers and I could spare them so I agreed to send them over at a certain time and I did. It was okay by them.

Q. When did—have you employed Mr. Charlton since that time? A. No.

Q. Have you employed Mr. Kettleman since that time? [151] A. Yes.

Q. When did he come back to you?

A. June 24th.

Q. Did you give him a regular job at that time?

A. Oh, yes, I put him back to work.

Q. When did Mr. Green return to you?

A. On June 24th.

Q. Did he receive a regular job at that time?

A. Yes.

Q. What project were you working on at that time?

A. The Reardon School, Reardon Boys' High School.

Q. Had that project just started up?

A. Yes.

Q. Was that the occasion for obtaining the return of Mr. Kettleman and Mr. Green?

A. Yes, sir.

Q. Was there a position at that time for a hod carrier on this project?

A. Yes, we were hiring hod carriers as we needed them.

Q. If Mr. Charlton had applied to you for a

(Testimony of Harry E. Drake.)

position as hod carrier, would you have hired him?

Mr. Law: Object to the question, it is speculative.

Trial Examiner Ward: Overruled.

Mr. Stanton: You may answer, Mr. Drake.

A. Yes. [152]

Q. (By Mr. Stanton): Is it your custom, in a situation such as you have described, to call back men that you have sent to another masonry contractor as soon as you have a job for them to fill?

A. Yes. We have agreed on that when we send the men.

Q. Had you agreed with Mr. Reed on that in this case? A. Yes, sir.

Q. Did Mr. Charlton apply for employment with you at any time since June 14, 1949?

A. I don't—he didn't ask for employment, no.

\* \* \*

### Cross-Examination

By Mr. Law:

Q. Did you call Mr. Charlton back when you needed him again after June 14, 1949?

A. No.

Q. Did you call Kettleman and Green back?

A. No. I notified Reed that I wanted the men.

Q. He let them return, did he?

A. Did you want me to explain?

Q. Yes.

A. Well, I notified the men, I think probably called them [153] up and spoke to Mr. Reed that I wanted my men back. But in the meantime I think

(Testimony of Harry E. Drake.)

I met Mr. Charlton on the street and he told me that there was some trouble. I heard about the trouble anyhow, at the job. He told me that he could not go to work. I hadn't asked him to go to work but they told me that he had been unable to go to work. He had worked for me off and on for years, you see.

Q. Did he say why he could not go to work?

A. Trouble with the Union. I can't just remember the words he used.

Q. Do you hire your men through the Union when you put on new employees?

A. Practically all of them are hired through the Union.

Q. Do you—if you don't hire the man through the Union do you require that the Union give him a clearance or approval before you let him continue?

A. I don't as a rule hire them that way unless they are men that have been working for me, laid off for a week or two. Then I call them up and have them come back, as long as they are in my employ. But when I need a new man or if a man has been gone, went to work for somebody else, I call up the Union Hall and ask for whatever I want.

Mr. Law: No other questions. Thank you.

Trial Examiner Ward: Redirect, if any.

#### Redirect Examination

By Mr. Garoni:

Q. The day you met Mr. Charlton on the street,

(Testimony of Harry E. Drake.)

Mr. Drake, please, did he ask you if you would take him back despite his Union trouble?

A. No, I don't think so. It was just a conversation. I had heard of the trouble myself. We just met down by the Builders Exchange. I think we passed the time of day. I couldn't remember what was said.

Q. As a matter of fact can't a man approach you with a request for his job regardless of the Union? Hasn't the Union permitted that?

A. I can't answer the questions because——

Q. Haven't some men come to you and asked you for work regardless of the Union? A. Yes.

Q. The Union has not objected to that procedure? A. No, I guess not. [155]

\* \* \*

Trial Examiner Ward: Call your next witness.

Mr. Stanton: Call Mr. Charlton.

Trial Examiner Ward: The Witness has been heretofore sworn.

ERNEST SYDNEY CHARLTON

recalled.

Direct Examination

By Mr. Stanton:

Q. Mr. Charlton, what is your home address? [156] A. My name?

Q. Home address. A. 1387 Third Street.

Q. How long have you been a member of the Local No. 36 of International Hod Carriers Union of America?

(Testimony of Ernest Sydney Charlton.)

A. I joined the Union in August, 1906.

Q. Have you been a member of the Union continuously since that time?

A. Yes, practically continuously. One time I was out from 1915 to 1916 when I got injured. I couldn't work for about twelve months with my head injuries. Then I was reinstated at half the amount in 1916.

Q. Have you been continuously a member of that Union?

A. Yes, I have always carried a card in San Francisco since.

Q. Are you still a member of that Union?

A. They wouldn't accept my dues when I wanted to pay them so naturally after a certain time you are out of the Union. They wouldn't accept any pay from me.

Q. Have you been notified of your expulsion from the Union?

A. I wasn't notified that I was expelled or anything about it; I sent in my dues to them and they returned the money to me. I sent in a money order registered letter.

Q. But you have never been notified that you had been expelled from the Union, is that correct?

A. They didn't notify me that I was expelled. [157]

Q. Do you still have your Union card?

A. Mr. Malatratt has the one paid up to the 30th of June. [158]

(Testimony of Ernest Sydney Charlton.)

Q. I have here a book which bears the title "Membership Book International Hod Carriers, Building and Common Laborers Union of America, Local No. 36."

It has the number 394 and certifies that Sydney Charlton has been duly initiated a member in Hod Carriers Building and Common Laborers Local Union No. 36 of International Hod Carriers Building and Common Laborers Union of America, located in the City of San Francisco.

I will ask you, Mr. Charlton, whether that is your evidence of membership in Local No. 36?

A. That's all I have is the book that they gave me.

Q. That book is still in your possession, is it not?

A. I still have it; that is still my book.

Q. Have you submitted a resignation to Local No. 36?

A. I haven't resigned from it at all. [160]

\* \* \*

Q. Had you previously been employed by Mr. Harry Drake?

A. Yes, I had worked for Harry Drake different times off and on, yes.

Q. Did you work for Mr. Drake during the major part of the year 1949 prior to May?

A. Yes. I worked for Drake.

Q. Did you work for Mr. Drake during the major part of the year 1948?

A. I worked in '48 for Mr. Drake, yes.

(Testimony of Ernest Sydney Charlton.)

Q. Did you work for Mr. Drake during the major part of the year 1947?

A. Probably yes, I think I did.

Q. Did you work for him in 1946?

A. I couldn't say whether I did or not. I may have and I may not, because I worked for a lot of other bosses. I don't know just exactly when I worked for him.

Q. It is your testimony that during 1947, 1948 and the first part of 1949 up to May you worked substantially continuously with Mr. Drake, is that correct?

A. Yes. The last job I worked for him was for the Federal [161] Government on the Oakland Air Base.

Q. Was anything said to you at the time, by Mr. Drake, at the time that you left him to be employed by Mr. Reed?

A. No, he just told me he had gone out of his work, the same as he had told me countless other times, that his work was getting cleaned up and that he didn't have any. That Reed and those had most of the work and you can always get a job with those people and you can easily get work but sometime in the future I would like to have you back working with me again, the same as you worked on other occasions.

Q. How did you happen to get a job with Mr. Reed?

A. I knew the superintendent, know him, worked with him off and on oh, for—occasionally for about

(Testimony of Ernest Sydney Charlton.)

eighteen or twenty years, John Dikerman. So I went up to his office where he hires men for Reed, the same as the superintendents do and foremen hire them, I went up to him and asked him for a job and he signed me up.

Q. What is the name of this gentleman?

A. John Dikerman. I don't know how you spell that, but he is the superintendent now for Reed. One time when I worked with him he was a bricklayer, sometimes foreman.

Q. Did you work any part of the day of June 14, 1949?

A. Yes, I worked up until about 11:00 o'clock.

Q. What occurred at 11:00 o'clock?

A. Well, Murphy came on the job and talked with some of the [162] bricklayers while I was building this scaffold. Then he walked away and went over to see Pat McDonough, the foreman. When he went away Ray Green come to me and said "Murphy's going to have you put off the job, and if Pat won't fire you he's going to pull the men off the job, the other hod carriers, and tie the job up."

Q. Did Murphy talk to you?

A. He never did.

Mr. Garoni: I object to the latter part of that statement as hearsay evidence, on the basis that Mr. Murphy would tie the job up.

Trial Examiner Ward: Overruled. The answer may stand.

Q. (By Mr. Stanton): Did Mr. Murphy talk to you?



(Testimony of Ernest Sydney Charlton.)

A. He didn't talk to me. He went over to where Mr. McDonough was, the foreman, came back with Mr. McDonough and Pat walked up to my— up to me and said, "Syd, Murphy says I've got to lay you off." "And I said I would give you until 12:00 o'clock and you'd better knock off and leave." Or he said, "I'll give you until 12:00 o'clock" and it was 11:00 o'clock and he would pay me until 12:00. Give me one hour. He didn't have to give me the extra hour. If he would have fired me I would have been paid off at 11:00 o'clock.

Q. Did you have any further conversation with Mr. McDonough?

A. No more talk to him. I didn't say a word to him. I says, "Okay," or something like that. [163]

Q. I am referring to Mr. McDonough, not to Mr. Murphy.

A. That was Mr. McDonough.

Q. So you had no further talk with Mr. McDonough?

A. No more talk after that. But Joe Murphy stepped up then and passed me a card. "Citation," he said; "Citation." That was all. I asked him no questions; he said nothing more. [164]

\* \* \*

Q. Did you leave the job at noon on June 14th?

A. I left about 11:00 o'clock. As soon as Pat told me I was ordered to be put off the job.

Q. Did you return to the job at any time after that?

(Testimony of Ernest Sydney Charlton.)

A. No, I didn't, because I was fired and that was the end of it. [165]

Q. Did you go to Mr. McDonough at any time after June 14th and ask to be put back to work?

A. To whom?

Q. Mr. McDonough, Mr. Reed's foreman.

A. I didn't ask him to put me back.

Q. You have never since June the 14th applied to Mr. McDonough for reemployment, is that right?

A. No, I didn't. I was fired off the job. When you are fired——

Trial Examiner Ward: You have answered the question. Just wait, don't volunteer any information.

Q. (By Mr. Stanton): What did you do following June 14th for the purpose of finding reemployment?

A. I looked on some jobs anywhere where there was a vacant lot getting excavated or anything.

Mr. Law: Mr. Examiner, I think that ordinarily this sort of material is reserved for subsequent ruling.

Trial Examiner Ward: For the purpose of this hearing it will be presumed that the Witness received work of the same type that he had after. It is a matter that can't be litigated at this time, it is a matter for compliance in the event he was ordered back to work and it has to be worked out further. So for the purpose of this hearing it will be as-

(Testimony of Ernest Sydney Charlton.)

sumed he has received employment of the same character that he had.

Mr. Stanton: In other words, Mr. Trial Examiner, so I [166] might understand, any questions relating to any employment insurance that he may have sought or any efforts to find further employment will not be admitted at this time, is that correct?

Trial Examiner Ward: That is right. It is a matter that has to be taken care of later and it is usually taken care of through the compliance because it might be six months or it might be a year before it would have to be determined.

Mr. Stanton: I have this further question relating to the character of his employment.

Q. (By Mr. Stanton): Mr. Charlton, after the incident of June 14th, did you go to Mr. Drake and seek reemployment?

A. No, because it is supposed to be you have to hire through the Hall. You've got to go through Murphy, he's got to send you on the job.

Q. You did not go to Mr. Drake and ask for employment?

A. I didn't go to him and ask for any more because I didn't see how he could put me on.

\* \* \*

### Cross-Examination

By Mr. Garoni: [167]

\* \* \*

Q. Going out to the Stonestown project now on

(Testimony of Ernest Sydney Charlton.)

June, 1949, did you hear what Mr. Murphy had to say to the bricklayers? You said he was talking to them.

A. No, they talked to him while I was building the scaffold.

Q. You weren't within hearing distance?

A. No, I don't know what they said or what he said to the bricklayers.

Q. Did you hear what Mr. Murphy told Mr. Pat McDonough in relation to yourself?

A. I didn't hear that. He talked to him separately.

\* \* \*

A. No, he didn't say come back to work.

Q. Did Mr. Murphy say that you should get off the job, to you personally?

A. He didn't say it; the other man did the firing. [169]

\* \* \*

Q. Isn't it a matter of fact that Mr. Murphy has permitted you to rustle jobs at any time?

A. I have been rustling for forty-four years.

Q. Without going through the Union first?

A. Yes, without going to the Union. I rustle my own jobs.

Q. As a matter of fact that is the way you got your Drake job, isn't it?

A. Well, I was out on my own jobs. I hired out on them.

(Testimony of Ernest Sydney Charlton.)

Q. You got the Drake job without Mr. Murphy's intervention? Let me put it a little differently; you got the Drake job without going to ask Mr. Murphy for the job, isn't that right?

A. A long time ago.

Q. Yes, originally.

A. Three or four years ago, yes.

Q. Did you get the Stonestown job the same way without going and asking Mr. Murphy about the job?

A. Yes, I went to work. I asked Mr. Dikerman. [170]

\* \* \*

### JOE MURPHY

a witness called by and on behalf of the Respondent Union, having been previously duly sworn, was examined and testified further as follows:

#### Direct Examination

By Mr. Garoni: [172]

\* \* \*

Q. Is Mr. Charlton still a member of the Union at the present time?      A. Yes.

Mr. Law: Please note my objection again to the materiality.

Trial Examiner Ward: It will be overruled and you have a continuing objection.

Q. (By Mr. Garoni): Mr. Charlton testified that he sent in his dues and they were refused. Will you explain what happened?

A. Yes. It is customary in relation to Unions when an individual is cited for something or when

(Testimony of Joe Murphy.)

he is fined that before his dues can be accepted that he must pay that fine or appear before, on the citation, whatever the citation happens to be.

Q. This is a rule that is an internal rule applicable to everyone alike in the Union?

A. Yes. Practically all Unions have the same rule.

Q. What is Mr. Charlton's status insofar as the dues are concerned at the present time?

A. Well, like any other individual that sends their dues in at the advice of some unknown party we have always kept them on the books until they did appear before the Board. [173]

Q. By that you have kept him on the books, would you explain that, are his dues paid or not paid?

A. His dues are paid, that is to the extent that he is on the Local books as well as International books.

Q. How is his dues paid?

A. Out of the Local's own fund. [174]

\* \* \*

Q. I would like to go back to the Stonestown project on June 14, 1949, again. When you were out on the job did you stay around to see that Mr. Charlton got off the job?

A. No, I left because I had other territories to cover.

Q. Did you actually see whether he got off the job or not?           A. No, I did not.

\* \* \*

(Testimony of Joe Murphy.)

Cross-Examination

By Mr. Stanton:

Q. Did you in the course of this conversation with Mr. McDonough on June 14th tell Mr. McDonough that Mr. Charlton was not a member of the Union?      A. No.

Q. Did you tell Mr. McDonough that Mr. Charlton was not in good standing with the Union?

A. No.

Q. This clearance that has been referred to, was that a matter which Mr. Charlton could have straightened out with the Union?      A. Yes.

Q. How would he have proceeded?

Mr. Law: Object to the question as calling for a speculative answer.

Mr. Stanton: Mr. Trial Examiner, the purpose of my question [175] is to find out what the significance of this particular dispute is. What Mr. Charlton had done wrong in the eyes of Mr. Murphy that justified Mr. Murphy's action on that date.

Trial Examiner Ward: The objection will be overruled, subject to a motion to strike as a number of objections have been.

Mr. Law: In addition I would like the record to show that I consider the matter immaterial and object to it on that ground.

Trial Examiner Ward: You have a continuing objection on that ground.

Q. (By Mr. Stanton): What was the basis of your objection to the continued employment of Mr. Charlton?

(Testimony of Joe Murphy.)

A. There wasn't any objection to his continued employment. The objection was to the extent that he must get a clearance if he were to go right back to work on the same job. He could have gone right back to work on the same job.

Q. What was the clearance you refer to?

A. The clearance that you were shown this morning.

Q. How does one go about to obtain it?

A. Either by calling up or by coming into the Hall direct or have the foreman or the contractor himself to call up.

Q. Is such a clearance issued as a matter of course upon such telephone calls?

A. That's right. We generally take the clearance right out [176] to the job and give it to the steward on the job when they call in for it.

\* \* \*

### Redirect Examination

By Mr. Garoni:

Q. Does the Union have any objection to Mr. Charlton's going to work tomorrow if he wants?

A. He could have been working all yesterday and today for that matter.

Q. Could he have gone to work immediately the next day on any job that he wanted after June 14th or even on June 14th?

A. He could have stayed or remained on the job and I didn't remove him from the job on June 14th.



(Testimony of Joe Murphy.)

He was told to get a clearance and he blew his top and went dashing off the job and got in an argument with the foreman, as far as I can see. [177]

\* \* \*

Mr. Law: Mr. Examiner, with the indulgence of the other parties, with whom I have discussed the matter, and of yourself, I would like, before calling Mr. Charlton as a rebuttal witness, to propose a stipulation, which I will read as follows:

The Respondent, George W. Reed, is now and for the past nine years has been a member of the Mason and Builders Association of California, Inc., an incorporated association of approximately 40 employers engaged in masonry, contracting, and related construction activities in Northern California. The Mason and Builders Association of California, Inc., has for the past several years, and the present time, had collective bargaining contracts with the International Hod Carriers, Building & Common Laborers Union of America, Local No. 36, covering hod carriers employed by members of the said Association, including George W. Reed. These contracts have been, and the present contract is, on a multiple employer basis through the Association.

That ends my proposed stipulation of facts. It is my understanding that the other parties don't dispute the facts and will stipulate to them, but do question the materiality of the matter. [181]

Mr. Stanton: The employer, Respondent Reed, will stipulate that, if called, Mr. Reed would testify

to the facts set forth in Mr. Law's statement. The Respondent objects to the introduction of such testimony, on the ground that it is incompetent, irrelevant and immaterial to this case. This case involves an alleged act of discrimination, which is not attributed to the Association referred to in that statement, and is not the result of the application of a common laborer policy by the Association on behalf of its members. It has no material bearing on the charge that is before this Trial Examiner.

Mr. Garoni: I also object to the admission for the Union of this stipulation. I think the facts will bear the stipulation out, however, but I also say the Association is not a party to this complaint, and at the end of this hearing to bring in the Association or attempt to bring in any facts relating to the Association is entirely irrelevant, immaterial, and incompetent.

Trial Examiner Ward: The objections will be overruled, subject to the proviso that there may be at the end, at the close of the hearing, a motion to strike by the parties, and under those circumstances the record will show the stipulation agreed to, except as noted by the statement of counsel for Respondent Reed, and counsel for Respondent Union. [182]

\* \* \*

ERNEST SYDNEY CHARLTON

a witness called by and on behalf of the General Counsel, National Labor Relations Board, having been previously duly sworn, was examined and testified as follows:

Mr. Garoni: I am informed by Mr. Joseph Murphy, the Business Representative of the Union, that there was no agreement in operation—this agreement was not in operation as of June 14, 1949, the date of this dispute. There was no agreement at that time.

Trial Examiner Ward: At the conclusion of the testimony of the witness on the stand, we will take that item up.

\* \* \*

Direct Examination

By Mr. Law: [183]

\* \* \*

.....  
(The document heretofore marked General Counsel's Exhibit No. 4 for identification, was received in evidence.) [186]

\* \* \*

GENERAL COUNSEL'S EXHIBIT No. 4

Bay Area Conference of Hod Carriers  
200 Guerrero St., San Francisco, Calif.

Clearance Card

This card must be deposited with representative before going to work. In San Francisco, deposit this card at 200 Guerrero St., Market 1-1806, with Joseph A. Murphy, Business Representative.

(Testimony of Ernest Sydney Charlton.)

In Alameda and Contra Costa County deposit this card at 2111 Webster St., Oakland, Calif., GLencourt 1-2474. Business Representative, James H. Pratt.

In Santa Clara County deposit this card at 72 N. Second St., San Jose, Calif. Ballard 4552. Business Representative, H. W. Freel.

In San Mateo County deposit this card with M. B. O'Connor, 723 B Street, San Mateo, Calif. Phone San Mateo Diamond 3-3775.

#### Citation

Dated: June 29, '49.

Name: S. Charlton.

Member of Local No. 36.

Employer .....

Location of Job .....

Signed: Joseph A. Murphy.

July 18—9 p.m.

[Union Label]

Received in Evidence July 7, 1950.

(Testimony of Ernest Sydney Charlton.)

Q. (By Mr. Law): Now, while you worked for Mr. Reed at the Stonestown Project, what work did you do?      A. Well,—

Q. What jobs?

A. I did scaffolding, built scaffolding around garages that are built of Hedite blocks, a kind of a concrete block.

Q. What other type of work, if any, did you do?

A. I did neveering on some of the houses, built flower pots; that is, walled with brick around, and you put flowers in the center. And stacks.

Q. I am asking you now to enumerate the different types of work you did. [187]

A. That was about all there was on that particular job.

Q. You mentioned "stacks." What do you mean by that?

A. That is the chimneys to the boilers, the Kewanee boilers they put in there. They built a stack, I think it is, about three-foot, six square. It goes up three story buildings and it has a pitched roof on it, about a 6-foot pitch, and then you go up two foot higher than the pitch of the house.

Q. Did you work on those?

A. Yes, and I built the scaffold all around. I put a scaffold on four sides.

\* \* \*

(Testimony of Ernest Sydney Charlton.)

Cross-Examination

By Mr. Garoni: [188]

\* \* \*

Q. Is this question correct: Aren't you [190] required to go to the Union to have this card stamped every week just so that the unemployment insurance people will know that you are seeking a job and not trying to get unemployment insurance without looking for work?

A. Yes. Lots of times Mr. Murphy is not at the Hall, as you have a fixed time to go to the Unemployment, and when he wasn't there, I waited for him and he didn't show up, so I went down to the Unemployment People and they paid me off when I told them that Murphy wasn't there to sign [191] it.

\* \* \*

Q. (By Mr. Stanton): Mr. Charlton, did you tell the Department of Employment that you were a member of Local No. 36 of the Hod Carriers' Union?

A. Yes. That is when I signed. I had to show them and sign it. That is why they sent me to get the blue card. I couldn't draw unemployment without the blue card, they said.

Q. What was the reason you gave to them for being out of work?

A. I signed a card that I was taken off the job by orders of Joe Murphy, the Business Agent, that he ordered the foreman to fire me.

(Testimony of Ernest Sydney Charlton.)

Q. Is that all you told them as your reason for being off the job?

A. That is about what I can remember. It is still on the card. They have the card what I wrote. [194]

\* \* \*

Q. Did you report to the Union Hiring Hall for the purpose of obtaining other employment?

A. No, I didn't go up there, because they took me off the job, so if they took me off the job, I couldn't get more work. [195]

\* \* \*

Q. (By Mr. Garoni): You made a statement a little while ago, that when Mr. Murphy handed you the second citation, you didn't know what it was for. Yet, did Mr. Murphy tell you out at the job out at Stonestown tract, that you failed to get a clearance, and didn't you know that?

A. He didn't tell me that.

Q. You tell me that you didn't know, and still don't know, the second time what the citation was for?

A. I was never told what the citation was for.

Q. No one informed you as to what the citation was for?      A. No, nobody. [196]

\* \* \*

Mr. Stanton: The Respondent employer is making no contention that his operations could not by some theory be tied into interstate commerce. Unquestionably, they could. [207]

\* \* \*

The dispute that was involved didn't relate to any great issue of policy either between the employer and the union, or the employer association and the union. It related to the alleged violation of the charging party, by the charging party, of a rule of the union that a man had to report to the union before he moved from one job to another. The man had an opportunity, had he so desired, to straighten out his difficulty with the union, and from the employer's standpoint, he [216] was simply protecting a job that was in progress against an interruption, a minor interruption, resulting from the activities of a temporary employee who was a long-time member of the union and where the dispute did not represent any attempt or any charge that he was not a member of the union. [217]

\* \* \*

This particular incident involved a temporary employee, one out of five hodcarriers, one out of eleven employees of the employer on this particular project. It was a matter of question as to whether he had complied with a rule of the union, which, from the employer's standpoint, presumably could be straightened out, and the employer was not put on notice that it could not be by reasonable action by the charging party. The employer was faced with an overt action by the union, which pulled or threatened to pull the hod carriers other than Mr. Charlton from the job, which would [221] have shut down the hod carrying operation and very quickly shut down the plasterers' operation, the masonry



operation, so that from a practical standpoint, and we submit also from the standpoint of the purpose of the Act, Respondent Reed was justified in taking the action which was taken by his foreman, because the interruption that would have resulted from failure to take the action that he did take would have been much more serious than the act which was taken, and that was to lay off the man until such time as the dispute that he was involved in with his union was settled. [222]

\* \* \*

Mr. Garoni: \* \* \* This is a sad travesty on human relations, that a minor incident of this nature, a failure to get a clearance card, has to result in a trial of this sort. Here is a gentleman, a union member for 42 years, who suddenly finds that after all he doesn't like a disciplinary rule, one perhaps which he himself promulgated and assisted in supporting, or the fact that he doesn't like his business agent, and here we are today on a case of this sort.

\* \* \*

Received July 18, 1950. [223]

In the United States Court of Appeals  
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

GEORGE W. REED,

and

INTERNATIONAL HOD CARRIERS, BUILD-  
ING & COMMON LABORERS UNION,  
LOCAL No. 36, AFL,

Respondents.

**CERTIFICATE OF THE NATIONAL LABOR  
RELATIONS BOARD**

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.87, Rules and Regulations of the National Labor Relations Board—Series 6, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a consolidated proceeding had before said Board, entitled, “In the Matter of George W. Reed and Ernest Sydney Charlton, Case No. 20-CA-268”; and “In the Matter of International Hod Carriers, Building & Common Laborers Union of America, Local No. 36, AFL, and Ernest Sydney Charlton, Case No. 20-CB-80,” such transcript including the pleadings and testimony and evidence upon which the order of the Board in said consolidated proceeding was

entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Order designating Peter F. Ward Trial Examiner for the National Labor Relations Board dated July 5, 1950.

(2) Stenographic transcript of testimony taken before Trial Examiner Ward on July 5, 6, and 7, 1950, together with all exhibits introduced in evidence.

(3) Respondent Reed's letter, dated July 18, 1950, requesting extension of time to file brief.

(4) Copy of Chief Trial Examiner's telegram, dated July 21, 1950, granting all parties extension of time to file briefs.

(5) Copy of Trial Examiner Ward's Intermediate Report, dated January 29, 1951 (annexed to item 18 hereof); order transferring case to the Board, dated January 29, 1951, together with affidavit of service and United States Post Office return receipts thereof.

(6) Copy of Erratum to Trial Examiner's Intermediate Report, dated February 6, 1951 (annexed to item 18 hereof), together with affidavit of service and United States Post Office return receipts thereof.

(7) Respondent Reed's letter, dated February 12, 1951, requesting extension of time for filing exceptions and brief.

(8) Respondent Union's letter, dated February 13, 1951, requesting extension of time to file brief.

(9) Copy of Board's telegram, dated February 14, 1951, granting all parties extension of time for filing exceptions and briefs.

(10) Respondent Reed's telegram, dated March 1, 1951, requesting further extension of time to file exceptions and brief.

(11) Copy of Board's telegram, dated March 2, 1951, granting all parties further extension of time to file exceptions and briefs.

(12) Respondent Union's exceptions to the Intermediate Report, received March 5, 1951.

(13) Respondent Reed's letter, dated March 7, 1951, requesting still further extension of time to file brief.

(14) Copy of Board's telegram, dated March 9, 1951, granting all parties still further extension of time to file exceptions and briefs.

(15) Respondent Reed's letter, dated March 15, 1951, requesting still further extension of time to file brief.

(16) Copy of Board's telegram, dated March 16, 1951, granting all parties still further extension of time to file briefs.

(17) Respondent Reed's exceptions to the Intermediate Report, received March 16, 1951. (Argumentative material deleted therefrom.)

(18) Copy of Decision and Order issued by the National Labor Relations Board on May 18, 1951, with Erratum to Intermediate Report and Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 19th day of March, 1952.

[Seal]      /s/ LOUIS R. BECKER,  
   Executive Secretary,  
   NATIONAL LABOR  
   RELATIONS BOARD.

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[Endorsed]: No. 13310. United States Court of Appeals for the Ninth Circuit, National Labor Relations Board, Petitioner, vs. George W. Reed and International Hod Carriers, Building & Common Laborers Union, Local No. 36, AFL, Respondents. Transcript of Record. Petition for Enforcement of Order of the National Labor Relations Board.

Filed March 26, 1952.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 13310

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

GEORGE W. REED,

and

INTERNATIONAL HOD CARRIERS, BUILD-  
ING & COMMON LABORERS UNION,  
LOCAL No. 36, AFL,

Respondents.

PETITION FOR ENFORCEMENT OF AN  
ORDER OF THE NATIONAL LABOR RE-  
LATIONS BOARD

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. IV, Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent George W. Reed, (hereinafter called Respondent Reed), his agents, successors and assigns and Respondent International Hod Carriers, Building & Common Laborers Union, Local No. 36, AFL, (hereinafter called Respondent Union), its officers, representatives, agents, succes-

sors, and assigns. The consolidated proceeding resulting in said order is known upon the records of the Board as "In the Matter of George W. Reed and Ernest Sydney Charlton, Case No. 20-CA-268"; and "In the Matter of International Hod Carriers, Building & Common Laborers Union of America, Local No. 36, AFL, and Ernest Sydney Charlton, Case No. 20-CB-80."

In support of this petition the Board respectfully shows:

(1) Respondent Reed is engaged in business in the State of California and Respondent Union is a labor organization engaged in promoting and protecting the interests of its members in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon all proceedings had in said matter before the Board as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on May 18, 1951, duly stated its findings of fact and conclusions of law, and issued an order directed to the Respondent George Reed, his agents, successors and assigns and Respondent Union, its officers, representatives, agents, successors, and assigns. The aforesaid order provides as follows:

## Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that:

1. The Respondent George W. Reed,<sup>6</sup> his agents, successors and assigns, shall:

a. Cease and desist from:

(1) Encouraging membership in International Hod Carriers, Building & Common Laborers Union, Local No. 36, AFL,<sup>7</sup> or in any other labor organization of his employees, by discharging and refusing to reinstate any of his employees for failing to obtain clearance from the Union or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment, except to the extent permitted by an agreement executed in accordance with Section 8 (a) (3) of the Act.

(2) In any other manner interfering with, restraining, or coercing his employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement executed in accordance with Section 8 (a) (3) of the Act.

b. Take the following affirmative action,

---

<sup>6</sup>Hereinafter referred to as the Employer.

---

<sup>7</sup>Hereinafter referred to as the Union.



which the Board finds will effectuate the policies of the Act:

(1) Offer to Ernest Sydney Charlton immediate and full reinstatement to his former or a substantially equivalent position without prejudice to his seniority or other rights and privileges, and jointly and severally with the Union make him whole in the manner set forth in the section entitled *The Remedy*, for any loss of pay suffered by reason of the discrimination against him.

(2) Upon request, make available to the National Labor Relations Board, or its agents, for examination and copying, all pay roll records, social security payment records, time cards, personnel records and reports, and all other records necessary for a determination of the amount of back pay due and the right of reinstatement under the terms of this Order.

(3) Post in conspicuous places at his main office in San Francisco, California, and at the Stonestown project, and at all other places where notices to employees are customarily posted, copies of the notice attached hereto and marked Appendix A. Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the Employer or his representative, be posted by him immediately upon receipt thereof and be maintained by him for at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Employer to insure

that such notices are not altered, defaced, or covered by any other material.

(4) Notify the Regional Director for the Twentieth Region, in writing, within ten (10) days from the date of this Order, what steps he has taken to comply herewith.

2. The Respondent International Hod Carriers, Building & Common Laborers Union, Local No. 36, AFL, its officers, representatives, agents, successors, and assigns, shall:

a. Cease and desist from:

(1) Causing or attempting to cause the Employer, his agents, successors, and assigns, to discharge or otherwise discriminate against any of its employees because they failed to obtain clearance from the Union, except to the extent permitted by an agreement executed in accordance with Section 8 (a) (3) of the Act.

(2) In any other manner causing or attempting to cause the Employer, his agents, successors, and assigns, to discriminate against his employees in violation of Section 8 (a) (3) of the Act.

(3) Restraining or coercing employees of the Employer, his successors or assigns, in the exercise of the rights guaranteed in Section 7 of the Act.

(4) Causing or attempting to cause any other employer engaged in commerce within the meaning of the Act to discriminate against Ernest Sydney Charlton for failing to obtain

clearance from the Union, except to the extent permitted by an agreement executed in accordance with Section 8 (a) (3) of the Act.

(5) In any other manner restraining or coercing Ernest Sydney Charlton, as an employee or prospective employee of any other employer engaged in commerce within the meaning of the Act, in the exercise of his right to refrain from any or all concerted activities within the meaning of Section 7 of the Act, except to the extent that such right may be affected by an agreement executed in accordance with Section 8 (a) (3) of the Act.

b. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) Jointly and severally with the Employer make Ernest Sydney Charlton whole, in the manner set forth in the section entitled The Remedy, for any loss of pay he may have suffered by reason of the discrimination against him.

(2) Post immediately in conspicuous places at its business office, and at all other places where notices to its members are customarily posted, copies of the notice attached hereto and marked Appendix B. Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by an official representative of the Union, be posted by it immediately upon receipt thereof and be maintained for a period of at least sixty

(60) consecutive days thereafter. Reasonable steps shall be taken by the Union to insure that such notices are not altered, defaced, or covered by any other material.

(3) Notify the Employer, in writing, and furnish a copy to Ernest Sydney Charlton, that the Union has no objection to Charlton's employment by the Employer.

(4) Notify the Regional Director for the Twentieth Region, in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

(3) In the event that the Board's Order, heretofore set forth, is enforced by a decree of this Court, it is hereby further respectfully requested that the notices attached hereto and made a part hereof shall be amended by deleting therefrom the words "A Decision and Order," and there shall be inserted in their stead the words, "A Decree of the United States Court of Appeals Enforcing an Order."

(4) On May 18, 1951, the Board's Decision and Order was served upon Respondents by sending a copy thereof postpaid, bearing Government frank, by registered mail, to counsel for both Respondents.

(5) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board, including the pleadings, testimony and evi-

dence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondents and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring Respondent Reed, his agents, successors and assigns and Respondent Union, its officers, representatives, agents, successors, and assigns to comply therewith.

NATIONAL LABOR  
RELATIONS BOARD

By /s/ A. NORMAN SOMERS,  
Assistant General Counsel.

Dated at Washington, D. C., this 19th day of  
March, 1952.

## Appendix A

Notice to All Employees  
Pursuant to  
A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will Not encourage membership in International Hod Carriers, Building & Common Laborers Union of America, Local No. 36, AFL, or in any other labor organization of our employees, by discharging and refusing to reinstate any of our employees for failing to obtain clearance from Local No. 36, or by discriminating against our employees in any other manner in regard to their hire or tenure of employment, except to the extent permitted by an agreement executed in accordance with Section 8 (a) (3) of the Act.

We Will Not in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act, except to the extent that such rights may be affected by an agreement executed in accordance with Section 8 (a) (3) of the Act.

We Will offer to Ernest Sydney Charlton immediate and full reinstatement to his former or substantially equivalent position without prejudice to any seniority, or other rights and

privileges previously enjoyed, and make him whole for any loss of pay suffered as a result of the discrimination against him.

All of our employees are free to become, remain, or to refrain from becoming or remaining, members of Local No. 36 or any other labor organization, except to the extent that this right may be affected by an agreement executed in accordance with Section 8 (a) (3) of the Act.

GEORGE W. REED

(Employer)

Dated.....

By .....,

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Appendix B

Notice

To All Members of International Hod Carriers, Building and Common Laborers Union of America, Local No. 36, AFL, and to All Employees of George W. Reed:

Pursuant to

A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will Not cause or attempt to cause George W. Reed, his agents, successors, and assigns, to discharge or otherwise discriminate against any of his employees, because they failed to obtain clearance from this union, except to the extent permitted by an agreement executed in accordance with Section 8 (a) (3) of the Act.

We Will Not in any other manner cause or attempt to cause George W. Reed, his agents, successors, and assigns, to discriminate against his employees in violation of Section 8 (a) (3) of the Act.

We Will Not restrain or coerce employees of George W. Reed, his agents, successors, and assigns, in the exercise of the rights guaranteed them in Section 7 of the Act.

We Will make Ernest Sydney Charlton whole for any loss of pay he may have suffered because of the discrimination against him.

INTERNATIONAL HOD CARRIERS, BUILD-  
ING & COMMON LABORERS UNION OF  
AMERICA, LOCAL No. 36, AFL  
(Union)

Dated.....

By .....,  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Endorsed]: Filed March 21, 1952.



[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH  
PETITIONER INTENDS TO RELY

In this proceeding, petitioner, National Labor Relations Board, will urge and rely upon the following points:

1. The Board properly asserted jurisdiction over respondents' activities since they affect commerce within the meaning of the Act.

2. The Board properly concluded that the discharge of employee Charlton by Respondent Reed, upon the demand of Respondent Union, constituted violations of Sections 8 (a) (1) and (3) of the Act by Reed and of Sections 8 (b) (1) (A) and 8 (b) (2) by the Union.

/s/ A. NORMAN SOMERS,  
Assistant General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 19th day of March, 1952.

[Endorsed]: Filed March 21, 1952.

[Title of Court of Appeals and Cause.]

ORDER TO SHOW CAUSE

United States of America—ss.

The President of the United States of America  
To George W. Reed, 1390 S. Van Ness Ave., San  
Francisco, California, and International Hod  
Carriers, Building & Common Laborers Union  
of America, Local No. 36, AFL, 200 Guerrero,  
San Francisco, California

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10 (e)), you and each of you are hereby notified that on the 21st day of March, 1952, a petition of the National Labor Relations Board for enforcement of its order entered on May 18, 1951, in a proceeding known upon the records of the said Board as

“In the Matter of George W. Reed and Ernest Sydney Charlton, Case No. 20-CA-268, and in the Matter of International Hod Carriers, Building & Common Laborers Union of America, Local No. 36, AFL, and Ernest Sydney Charlton, Case No. 20-CB-80.”

and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 26th day of March in the year of our Lord one thousand, nine hundred and fifty-two.

[Seal]     /s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

Returns on service of writ attached.

Received March 27, 1952.

[Endorsed]: Filed April 9, 1952.

[Title of Court of Appeals and Cause.]

ANSWER OF RESPONDENT  
GEORGE W. REED

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

Comes now Respondent George W. Reed and as his answer and response to the petition for enforcement filed herein, admits, denies and alleges as follows:

I.

Answering paragraph (1) of said petition, Respondent denies that he has committed any unfair labor practice within this judicial circuit, or elsewhere. He denies that this Court has jurisdiction of the petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended (hereinafter referred to as the "Act").

II.

Respondent admits the allegations contained in paragraphs (2), (4) and (5) of said petition.

III.

The order which Petitioner seeks to enforce should be set aside for the reason that the following findings of fact and conclusions of the National Labor Relations Board (hereinafter referred to as the "Board"), and each of them, are not supported by substantial evidence on the record considered as a whole:

(a) The finding and conclusion that Respond-

ent's operations were subject to the Board's jurisdiction.

(b) The finding and conclusion that Respondent was engaged in commerce within the meaning of the Act, and that his operations had and tended to have a direct and substantial effect upon interstate commerce as defined by the Act.

(c) The finding and conclusion that it would effectuate the policies of the Act for the Board to assert and exercise jurisdiction in the matter before the Board.

(d) The finding and conclusion that the charging party, Ernest Sydney Charlton, was discharged by Respondent.

(e) The finding and conclusion that Respondent, by discharging Charlton, engaged in unfair labor practices within the meaning of Sections 8(a) (1) and (3) of the Act.

(f) The finding and conclusion that the Respondent Union, by causing Respondent to discharge Charlton, engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) and Section 8 (b) (2) of the Act.

(g) The finding and conclusion that the activities of Respondent had a close, intimate and substantial relation to trade, traffic and commerce among the several States, and tended to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### IV.

The order which Petitioner seeks to enforce is arbitrary, capricious and contrary to law, and

should therefore be set aside, for the following additional reason:

Said order was issued at a time when the Board was continuing to refuse to entertain petitions for certification and union-shop elections in the building and construction industry. The enforcement of the unfair labor practice provisions of the National Labor Relations Act against Respondent, under the circumstances of this case, at a time when employers (such as Respondent) and unions in the building and construction industry, have been denied the benefit and protection of the election provisions of the Act, is contrary to the intent of Congress, and a denial of due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

#### V.

Such portion of said order as directs Respondent to offer Ernest Sydney Charlton immediate and full reinstatement to his former or a substantially equivalent position should be set aside and denied enforcement for the reason that the undisputed evidence before the Board establishes that Charlton was a temporary employee of Respondent, on leave or "loan" from his regular employer, and that under the terms of such leave or "loan" Charlton would have returned to his regular employer on or about June 24, 1949.

#### VI.

Such portion of said order as directs Respondent to offer Ernest Sydney Charlton immediate and full

reinstatement to his former or a substantially equivalent position should be denied enforcement for the following reason:

Promptly after receiving notice of the Intermediate Report of the Trial Examiner in this proceeding, Respondent offered employment to Charlton as a hodcarrier at the prevailing wage rate for such work. Charlton worked for Respondent from February 9, 1951, to March 23, 1951, at which time he was laid off due to the termination of the project on which he was working.

Wherefore, Respondent prays that the Court set aside the Board's order and dismiss its petition for enforcement.

Dated: May 28, 1952.

GARDINER JOHNSON,  
THOMAS E. STANTON, JR.

By /s/ THOMAS E. STANTON, JR.,  
Attorneys for Respondent  
George W. Reed.

Affidavit of service by mail attached.

[Endorsed]: Filed May 28, 1952.

[Title of Court of Appeals and Cause.]

ANSWER TO PETITION OF THE NATIONAL  
LABOR RELATIONS BOARD FOR  
ENFORCEMENT OF ITS ORDER

Comes now the Respondent, International Hod Carriers, Building & Common Laborers Union, Local No. 36, AFL, and for answer to the petition of the National Labor Relations Board, for the enforcement of its order against the Respondent, admits, denies and alleges as follows:

I.

Answering the allegations in Paragraph (1) of said petition, Respondent admits that Respondent Reed is engaged in business in the State of California and that Respondent Union is a labor organization engaged in promoting and protecting the interests of its members in the State of California, and further answering said Paragraph, denies each and every allegation and statement therein contained not herein specifically admitted to be true.

II.

Admits all of the Petitioner's allegations contained in Paragraphs (2), (4) and (5) of the petition herein.

III.

Alleges that Ernest Sydney Charlton, was offered reinstatement to his former position, without prejudice to any of his rights or privileges by both oral and written communications.



## IV.

Allege that there is no substantial evidence on the record considered as a whole to support the findings and conclusions of law of the National Labor Relations Board, that the interstate commerce activities of the Respondent Employer, George W. Reed, tend to directly and substantially burden, obstruct or affect interstate commerce.

## V.

Allege that there is insufficient evidence on the record considered as a whole to support the findings and conclusions of law of the National Labor Relations Board that the Respondent Employer George W. Reed, engaged in unfair labor practices within the meaning of section 8 (a) (1) and (3) of the National Labor Relations Act as amended; that the activities of said Respondent Employer did not tend to encourage or discourage the charging party or any other employees membership in a labor organization, or to restrain or coerce said Respondent Employer's employees in the exercise of their rights under Section 7 of the Act.

## VI.

Allege that there is insufficient evidence in the record considered as a whole to support the findings and conclusion of law of the National Labor Relations Board that the Respondent Union has engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) and Section 8 (b) (2) of the Act; that the activities of the Respondent Union as

shown by the evidence did not restrain or coerce the charging party or any other employee in the exercise of their rights guaranteed in Section 7 of the Act, nor did the Respondent union attempt to cause the Respondent Employer herein to encourage or discourage any employee's membership in a labor organization.

And for a Further and Separate Defense to the Petition Filed Herein, This Respondent Alleges:

### VII.

That the order of the National Labor Relations Board is contrary to law, void and of no effect, and in excess of its jurisdiction for the reason that it is based in part upon the alleged failure of the Respondent Employer and Respondent Union to have in effect a valid union security agreement executed in accordance with Section 8 (a) (3) of the Act; that at the time of the filing of the charge and complaint herein the National Labor Relations Board could not and would not entertain petitions for union shop elections in the Building and Construction industry; that it was therefore impossible for the Respondent Employer and the Respondent Union to comply with the Act in said respect; that such inability and refusal of the Board to permit such a union-shop election amounted to a denial of due process of law in violation of the Fifth Amendment to the United States Constitution.

Wherefore this Respondent prays:

1. That the Petitioner's petition for enforcement herein be dismissed.

2. That this Honorable Court grant to the Respondent such other and further relief in the premises as the rights and equities of the cause may require.

Dated: June 4, 1952.

/s/ WATSON A. GARONI,  
Attorney for Respondent International Hod Carriers, Building & Common Laborers Union, Local No. 36, AFL.

[Endorsed]: Filed June 5, 1952.

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[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS RELIED UPON BY  
THE RESPONDENT UNION

To the Honorable, the Judges of the United States Court of Appeals for the Ninth Circuit.

Comes now the Respondent International Hod Carriers, Building & Common Laborers Union, Local No. 36, AFL, and pursuant to Rule 19 (6) of the rules of this Court, files this statement of points upon which it intends to rely in the above-entitled proceeding, and designation of the record necessary for the consideration thereof:

I.

Statement of Points

1. That there is no substantial evidence on the record considered as a whole to support the findings

and conclusions of law of the Board, that the business operations of the Respondent Employer herein, tend to directly and substantially burden, obstruct, or affect interstate commerce.

2. That there is no substantial evidence on the record considered as a whole to support the findings and conclusions of law of the Board, that the Respondent Employer, through discrimination or coercion of discrimination encouraged or discouraged membership in a labor organization of the charging party or any other Employee, in any manner whatsoever as to constitute an unfair labor practice under the act.

3. That there is no substantial evidence on the record as a whole to support the findings and conclusions of law of the Board, that the Respondent Union through union coercion of employer discrimination brought about discrimination which tended to encourage or discourage the union membership of the charging party or any other employee, so as to constitute an unfair labor practice under the Act.

4. That the order of the Board based in part upon the failure of the Respondent's Employer and Union to execute a union shop agreement in conformity with Section 8 (a) (3) of the Act is contrary to law, void and of no effect amounting to a denial of due process of law in violation of the Fifth Amendment to the United States Constitution in view of the National Labor Relations

Board's inability and refusal to entertain elections for a union shop in the Building Construction Industry at the time of the bringing of the charges and complaint herein.

\* \* \*

Dated: June 4, 1952.

/s/ WATSON A. GARONI,

Attorney for Respondent, International Hod Carriers, Building & Common Laborers Union, Local No. 36, AFL.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 5, 1952.

